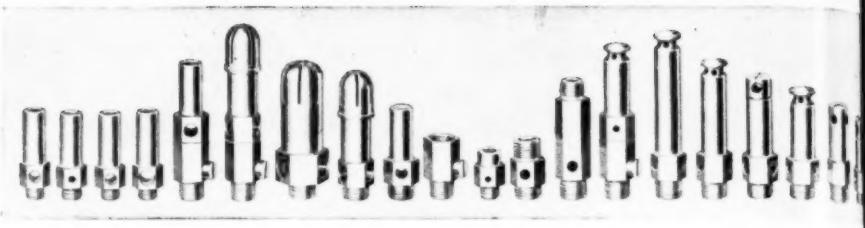
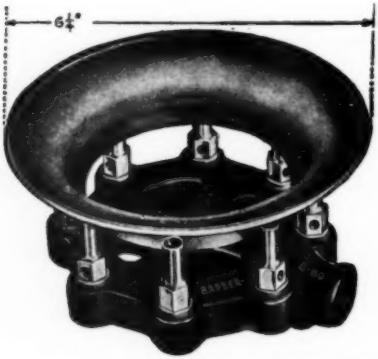
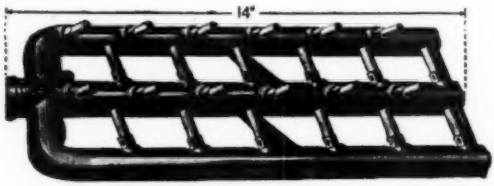
Public Utilities

Volume XLVIII No. 10 November 8, 1951

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS







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We can be of help to gas companies and organizations specializing in the conversion work of changing over gas-burning equipment from manufactured to natural gas. We will supply the proper jets and controls to adapt the user's present Barber Burner to natural gas, or we will furnish Barber equipment to replace existing burners which cannot be adapted to natural gas. The famous Barber jets employ a combustion principle yielding extremely high efficiency. A wide variety of these jets is shown above, and a few typical burner units from our extensive line for all applications.

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Public Utilities FORTNIGHTLY

VOLUME XLVIII NOVEMBER 8, 1951 NUMBER 10

ARTICLES

FEATURE SECTIONS

PUBLIC UTILITIES FORTNIGHTLY.. stands for Federal and state regulation of both privately owned and operated utilities and publicly owned and operated utilities, on a fair and nondiscriminatory basis; for nondiscriminatory administration of laws; for equitable and nondiscriminatory taxation; and, in general—for the perpetuation of the free enterprise system. It is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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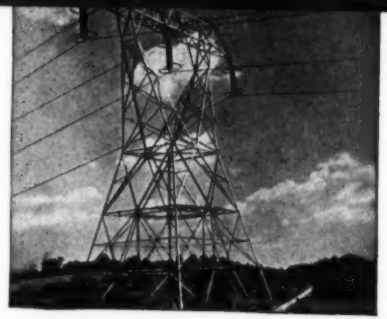
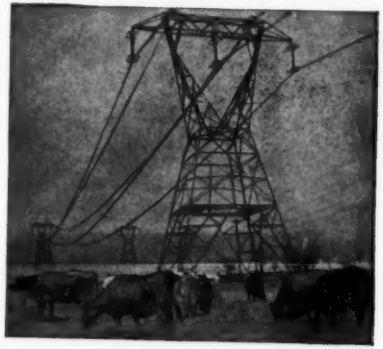
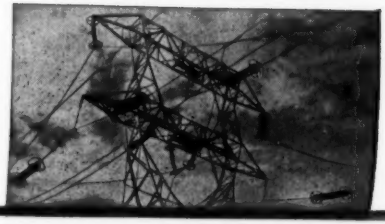
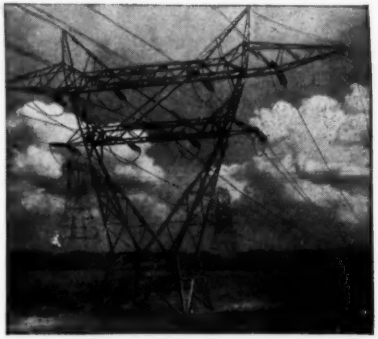






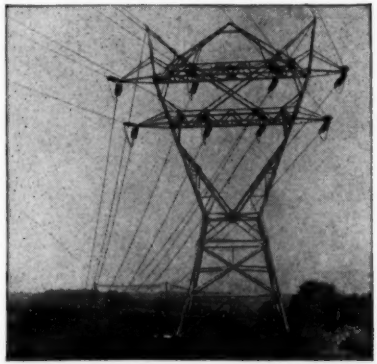
DESIGNS UNLIMITED

DESIGNS UNLIMITED



If your engineers have their own ideas on tower design, well and good. We will follow them to the letter and adhere closely to specifications. Your engineers realize, as we do, that despite general similarity no two towers are alike. Each tower must be designed for its particular location and purpose.

Let us apply our four decades of experience in building towers for any and all conditions of terrain and load, to your power transmission problems.



BLAW-KNOX DIVISION OF BLAW-KNOX COMPANY
2110 Farmers Bank Building, Pittsburgh 22, Pa.

BLAW-KNOX
TRANSMISSION TOWERS

Pages with the Editors

THE old truism that proximity breeds local interest was the basis for the vaudeville joke which the late Al Jolson used to tell about three neighborhood tailors, all trying to compete for business on the same block in New York city. The first tailor, who had some flair for advertising, ordered a large sign painted for the front of his establishment. It said, boldly:

"THE Best Tailor in the City of New York."

THE second tailor was spurred by this to the point of having an even larger sign painted for the front of his shop, which said:

"THE Best Tailor in the United States."

THE third tailor thought about this a while, and then had a fairly modest sign painted, which completely stopped his two competitors. It simply stated:

"THE Best Tailor in This Block."

ANY local newspaper editor knows that the average citizen can become more interested in a dogfight just across the street than in the fate of thousands of flood disaster victims in faraway China.

JOHN F. CHILDS

CHARGES of "absentee management" and "foreign control" hurled against the large public utility holding systems during the thirties, certainly brought one truth home to public utility management. That was that a public utility organization or system can lose contact with its own service area and the people who live in it, if it concentrates too much on publicizing or playing up its large-scale and far-flung operations, along national or interstate lines. It can even come to be regarded as something of a stranger, rather than a neighbor, in the very community it serves. To offset this, along the lines indicated in the above ancient joke, the up-to-date public utility must concentrate on being the "best in the neighborhood," as distinguished from the best in the state or interstate region.

JUSTIN R. WHITING

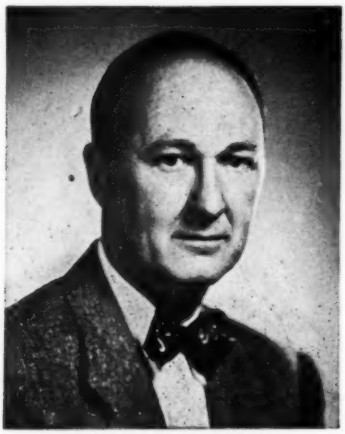
CONSUMERS POWER COMPANY of Michigan is one of those progressive corporations which have tried out the experiment of holding regional meetings for stockholders. In the leading article in this issue, JUSTIN R. WHITING, presi-

dent of this utility company, gives us an account of the results to date and the reasons why such a policy was adopted. Local ownership, and interest in the welfare of a public utility, is a foundation for public relations which can be developed by bringing the company's message to the stockholder in his own home town.

MR. WHITING naturally comes by his knowledge of former holding company problems as well as good up-to-date operating utility management. He has been head of both. Born in St. Clair and educated at the University of Michigan (LLB), he was practicing law in New York city as counsel for the old Commonwealth & Southern Corporation when he was made president in 1940. He succeeded the late Wendell Willkie, who resigned that year to run for President of the United States. Following the reorganization of Commonwealth & Southern, MR. WHITING went back to his native Michigan to become president of Consumers Power Company.

* * * *

IT may surprise some of the readers to know that state commission regulation, as well as the regulated utilities, stand in need of a good press or professional publicity techniques. FRANK C. SULLIVAN, on the staff of the California Public Utilities Commission, tells us how this is done in the article beginning on page 620. SULLIVAN is a veteran newspaperman. Following a legal education at Silver Bow College in Butte, Montana, SULLIVAN was associated with several western newspapers: *Anaconda Standard* (Butte); *Morning Oregonian* (Portland); *Sacramento Bee;* and the *Oakland* (California) *Tribune.*



FRANK C. SULLIVAN

* * * *

JOHN F. CHILDS, who gives us an investor's eyeview of the utility rate of return under present economic conditions (beginning on page 632), is a native New Yorker. He was educated at Trinity College (MS, '32) and Harvard Graduate Business School (MBA, '33). He has since become a noted utility security analyst, specializing in that field, except for a tour of duty with the Navy (Lieutenant Commander) during World War II. MRS. CHILDS is at present assistant vice president of the Irving Trust Company.

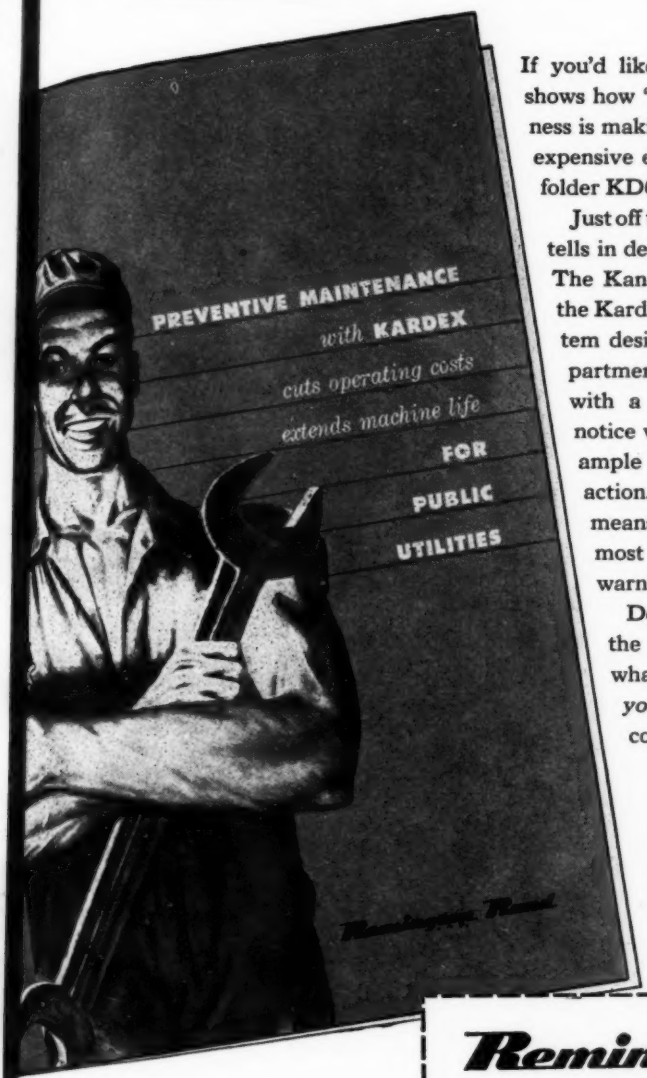
* * * *

ALFRED M. COOPER, who has spent years in personnel work on both public and private utility operations and has written volumes on the subject, explains the so-called "McCormick Plan," in his article beginning on page 639. The key to interesting employees in problems of management, is the foreman or supervisory employee. And the key to his intelligent and sympathetic interest may well lie in an advisory form of participation. MR. COOPER, who has spent twenty-odd years in supervising employee training for various industries and agencies, now makes his home at Desert Center, California.

ALSO in this issue is the first instalment of the papers presented at the American Bar Association, Section of Public Utility Law, meeting in New York city, September 17th and 18th. The balance of these papers will appear in our next issue, out November 22nd.

The Editors

wer equipment failures—less "down-time" ough SCHEDULED PREVENTIVE MAINTENANCE



If you'd like to read a case history that shows how "the other fellow" in your business is making big savings in caring for his expensive equipment—send today for free folder KD656.

Just off the press, this informative folder tells in detail the 20 years' experience of The Kansas Gas and Electric Co. with the Kardex preventive maintenance system designed for their Generating Department. They avoid expensive repairs with a simple system which flashes notice when inspections are needed in ample time for effective, economical action. Kardex is not only the simplest means of achieving this result, but the most unfailing. You *can't miss* the warning Kardex signals.

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Coming IN THE NEXT ISSUE

★

COMPETITIVE BIDDING PROVES OUT

Although the regulatory policy of Federal commissions has been strongly in favor of competitive bidding on public utility security issues, proponents of negotiated dealing continue to object. A number of these critical articles have appeared in PUBLIC UTILITIES FORTNIGHTLY during recent years. Here is an able article on the other side by a well-known consultant of public utility finance, John F. Falvey of New York. His data lend support to his position that competitive bidding has resulted in successful issuance of utility securities, no matter how much management may prefer negotiated sales.

A NATURAL GAS PIPELINE COMPANY DOUBLES IN ARCHAEOLOGY

It would seem to be a long distance from the front office of a busy natural gas supply company to King tut's Tomb or the solemn halls of a museum. But one southwestern pipeline company has taken a somewhat similar route in its stride. B. Marshall Willis, editor of the El Paso Natural Gas Company publications, gives us an interesting account of what happened when line construction began to run into priceless relics of archaeological value. The resulting co-operation between government scientists and the pipeline construction teams is an adventure well worth reading about.

A FLORIDA UTILITY'S GOOD NEIGHBOR POLICY

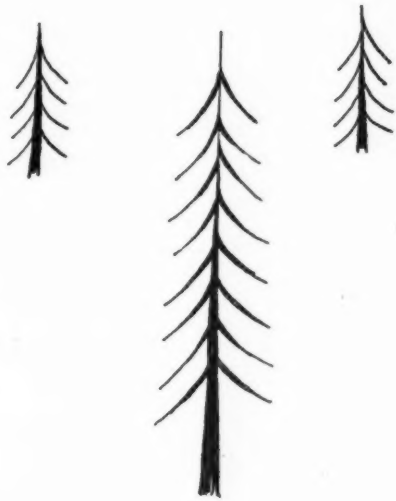
C. E. Wright, professional writer of Jacksonville, Florida, has given us a description of how one utility company has conducted its own campaign to build public relations by promoting industrial enterprise and widening appreciation of the virtues of its own home state. This campaign to help community building has paid off. Figures on power consumption in this territory speak for themselves.

ADDRESSES ON UTILITY PROBLEMS BEFORE THE AMERICAN BAR ASSOCIATION—APPENDIX PART II

Not only legal, but economic and financial problems of operating public utilities engaged the attention of the Section of Public Utility Law of the American Bar Association. This appendix concludes the reporting of the various addresses given at the sessions of the annual meeting of the Section of Public Utility Law during the American Bar Association convention at the Waldorf Astoria hotel in New York city on September 17th and 18th.

★

Also . . . *Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.*



How high is a tree?

THERE'S a vast difference between the height of a redwood and a red maple.

Or between an elm and a dogwood.

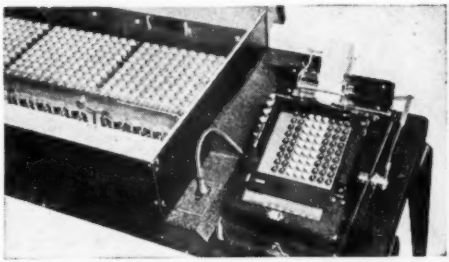
Trees come in a wide range of sizes, and so do customers' bills.

Mighty helpful data

In planning rate and promotional programs, therefore, it's mighty helpful to know just how your customers' bills fall into various kilowatt-hour rate blocks.

The Recording and Statistical Corporation will do such analyses for you at moderate cost on its specially designed Bill Frequency Analyzer. It processes as many as 200,000 bills a day, and the cost to you is far less than the expense of having the bills analyzed by clerks in your own offices.

We'll gladly send you the complete facts about this accurate and economical method of compiling usage data. Just write for "The One Step Method of Bill Analysis."



This Bill Frequency Analyzer—developed especially for utility usage data—automatically classifies and adds in 300 registers—in one step!

RECORDING AND STATISTICAL CORPORATION

100 Sixth Avenue **New York 13, N. Y.**

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

LORD ACTON

"Power corrupts and absolute power corrupts absolutely."

ARCH N. BOOTH
Executive vice president, Chamber of Commerce of the United States.

"If Washington runs our life, we will surely end up with state Socialism, or something far worse."

ERIC JOHNSTON
Administrator, Economic Stabilization Agency.

"With decent luck, with hard slugging, with patience, plus a helping of confidence, I believe we can shuck off controls in two years—and maybe sooner."

FRED D. FAGG, JR.
President, University of Southern California.

"America's greatest protection from her enemies is not the atom bomb nor any other single instrument of destruction. It is her capitalistic system."

ARTHUR J. COONS
President, Occidental College.

"We should purge all pork-barrel public works from the public budget and jettison or postpone indefinitely all of those already appropriated that are not vital to the defense effort."

LESLIE GOULD
Financial editor, New York Journal American.

"Taxes are more inflationary than private spending. For government—particularly the kind in power today—spends more recklessly and foolishly than the average man or woman."

OSCAR J. CAMPBELL
Professor Emeritus of English, Columbia University.

"Except for a few abnormally quiet Victorian years, there have always been dark clouds on the horizon; there have always been invitations to despair. Men have always had to struggle for light."

EDITORIAL STATEMENT
New York Journal American.

"In a free society, competition determines profits, the legitimacy of which is not subject to arbitrary determination by bureaucrats. It is sheer bunk to assume that the firm, making slender profits or even losses, is the most socially useful."

HAROLD G. MOULTON
President, Brookings Institution.

"If our annual government deficits are continued, they will inevitably undermine the entire private enterprise system and destroy the essential incentives to progress. The trends of the past fifteen years have carried us to the zone of imminent disaster."

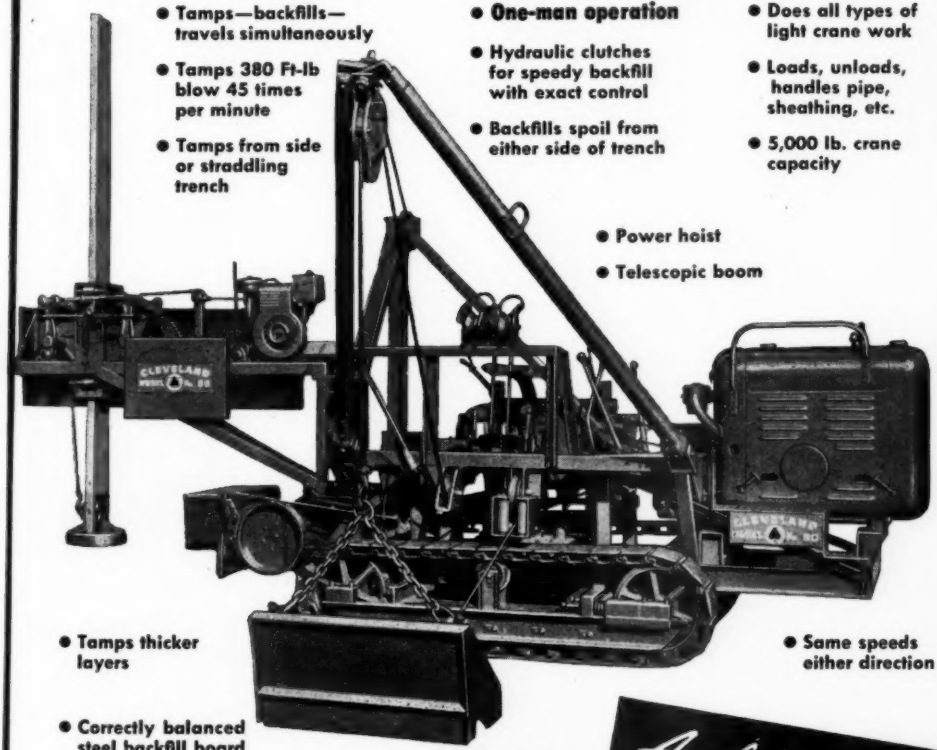
NOW...do all three trench-completion jobs with one machine

CLEVELAND MODEL 80

the only machine of its kind!

IT TAMPS! IT BACKFILLS! IT LAYS PIPE!

- Tamps—backfills—travels simultaneously
- Tamps 380 Ft-lb blow 45 times per minute
- Tamps from side or straddling trench
- **One-man operation**
- Hydraulic clutches for speedy backfill with exact control
- Backfills spoil from either side of trench
- Does all types of light crane work
- Loads, unloads, handles pipe, sheathing, etc.
- 5,000 lb. crane capacity
- Power hoist
- Telescopic boom



- Tamps thicker layers
- Correctly balanced steel backfill board
- Full crawler maneuverability
- Same speeds either direction

A MACHINE THAT BELONGS IN YOUR '52 PLANS

Get more work for your budget dollar! The "80" is time-tested and job-proved—for tamping, backfilling, pipe handling and other types of trench completion work. Get complete information on it *now!*

Available Now!

Order now for prompt delivery, clean up your back-end problems before winter sets in. The "80" is available 2 ways . . .

WITH OR WITHOUT TAMPER

SEE YOUR LOCAL DISTRIBUTOR OR CONTACT FACTORY DIRECT

THE CLEVELAND TRENCHER CO. 20100 ST. CLAIR AVE. CLEVELAND 17, OHIO

CHARLES E. WILSON
Director, Office of Defense Mobilization.

". . . the important thing to bear in mind is this—and let me emphasize it from my heart—no man has a right to compromise the life or safety of a single boy in Korea or to compromise the future of this nation."

HARRY S. TRUMAN
President, United States.

"World peace and human welfare are too precious to be made the footballs of partisan politics. They must not be jeopardized by men who are careless with the truth. When we face such solemn decisions as those which now confront our country, we must act on the basis of facts, not fables."

EDITORIAL STATEMENT
The Saturday Evening Post.

"We owe our well-being to a political system based, not on divine right of 'efficient government' or the supremacy of Parliament or some mythical economic determinism, but simply to the unique theory that the individual, any individual, has 'inalienable rights' which his governors are bound to respect."

ROBERT JOHNSON
President, Temple University.

"The people of this country are now, in large measure, informed of the waste, duplication, and overlapping which the Hoover report revealed. With a '50-cent dollar' constricted by Federal taxation which takes one out of five of all income dollars, our people today feel abused by the prodigality of the government as they never did before."

RALPH T. DORSEY
Los Angeles city traffic engineer.

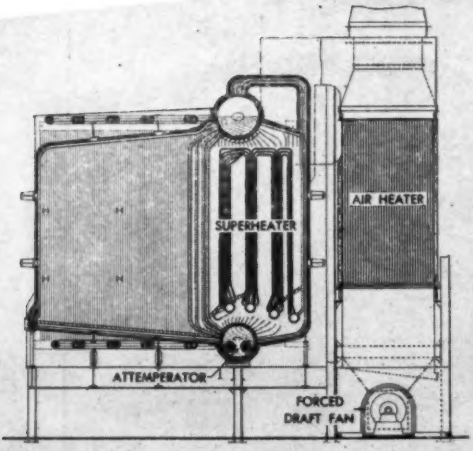
"The principle of one-way traffic control is recognized throughout the country. The benefits of such control have been established in a number of cities, and it is an accepted conclusion among traffic engineers that one-way control, when properly used, will increase capacities, reduce delays, and bring about a substantial betterment in street safety."

M. S. RUKEYSER
Columnist.

"It is sheer fantasy to assume that by present 'patent medicine' remedies the country can legislate out of existence the consequences of long years of fiscal and monetary excesses, follies, and malpractices. . . . But the test of the genius of the people lies in their ability to peer through hokum, and to set a course based on an understanding of what contributes to national greatness."

THEODORE R. MCKELDIN
Governor of Maryland.

"We know that we can cope successfully with powers arrayed against us—even though the cost be great—but as we make hard the sinews of war, many of us are prone to neglect those equally important muscles of sovereignty of the states and of the people. Herein lies the real, long-range danger to our freedoms. State after state falls into line by surrendering its own powers and responsibilities to Washington, and then seeking to replace those powers and responsibilities by usurping those of the smaller units of government."



B&W Integral-Furnace Boiler, Type FH, with pressurized casing, now in successful operation in outdoor central station installation. Design capacity is 300,000 lb. of steam per hr. at 875 psi and 910 F with gas-firing.

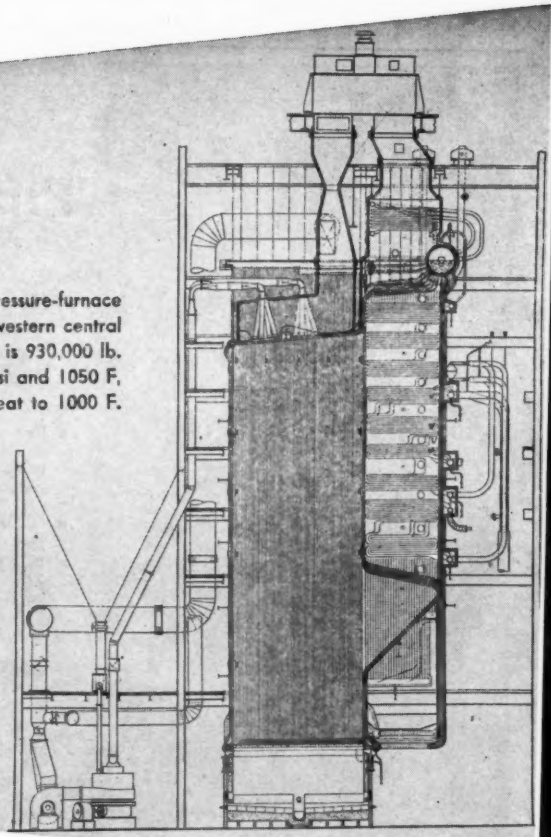
PRESSURIZED

FOR NEW ECONOMIES

Demand charge for Induced-Draft fan capacity may run as high as one-half of one per cent of gross generating capacity . . . an appreciable expense to any central station. Maintenance, too, is excessive because of constant exposure to hot gases and entrained abrasive particles.

These reasons help explain the importance of B&W's latest development —pressurized furnace construction. ID fans can be eliminated and users assured of the four big advantages listed on the opposite page.

A creative approach to boiler design and application, working in close co-operation with far-sighted managements and power engineers, has identified B&W with steam-power progress for more than 80 years. Perhaps it's just what is needed to effect significant steam-generating economies in the solution of *your* present problems or future plans.



B &W Radiant Boiler of pressure-furnace design now serving in mid-western central station. Design capacity is 930,000 lb. of steam per hr. at 2300 psi and 1050 F, with reheat to 1000 F.

Another Example of B&W Engineering for Economy

mproved principle of boiler-furnace operation pioneered by B&W

...OFFERS MAJOR COST SAVING ADVANTAGES

1 Eliminates ID fan — lowers demand charge.

2 Prevents air infiltration — provides higher boiler efficiency.

3 Simplifies draft control — permits quick, easy, effective adjustment to optimum combustion conditions at all loads.

4 Simplifies design — lowers initial cost of duct and stack arrangement.

Helping Industry Cut Steam Costs Since 1867

BABCOCK & WILCOX

FIG. B-268

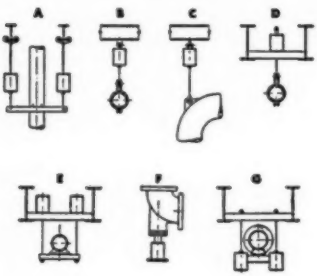
Pre-solve Pipe Suspension Problems...

with Grinnell Pre-engineered Spring Hangers

- Maximum variation in supporting force per ½" of deflection is 10½% of rated capacity — in all sizes.
- Precompression* assures operation of spring within its proper working range where variation in supporting force is at a minimum.
- Compact—minimum headroom made possible by precompression*.
- Guides prevent contact of coils with casing wall or hanger rod and assure continuous alignment and concentric loading of spring.
- All-steel welded construction meets pressure piping code.
- 16 sizes available from stock — load range from 74 lbs. to 9000 lbs.
- Easy selection of proper sizes from simple capacity table.
- Installation is simplified by integral load scale and travel indicators.
- Unique swivel coupling provides adjustment and eliminates turnbuckle.

*Precompression is a patented feature.

TYPICAL APPLICATIONS



(A) Rod threaded to top cap (B) Furnished with single lug (C) Two lug style (D) Top adjusting (E) Adjustable top and bottom (F) For floor support (G) Trapeze assembly.

FOR LESS VARIATION IN SUPPORTING FORCE — FIG. 98

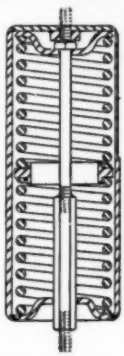


Fig. 98 is an adaptation of Grinnell's popular spring hanger, Fig. 268. It consists of two springs arranged in series within a single casing. A centering guide insures the permanent alignment of the spring assembly.

Fig. 98 has half the load deflection rate, and double the total working range of Fig. 268. Its 16 spring sizes accommodate loads from 74 lbs. to 9000 lbs. — but with a total working range *up to 5 inches!* Fig. 98 comes in the same seven types as shown for Fig. 268. Design details for identical types and sizes are the same for Fig. 98 and Fig. 268.

GRINNELL

WHENEVER PIPING IS INVOLVED

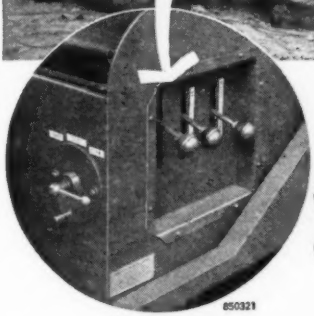
Grinnell Company Inc., Providence, Rhode Island • Sales Offices and Warehouses in Principal Cities

pipe and tube fittings • welding fittings • engineered pipe hangers and supports • Thermolier unit heaters • valves Grinnell-Saunders diaphragm valves • pipe • prefabricated piping • plumbing and heating specialties • water works supplies industrial supplies • Grinnell automatic sprinkler fire protection systems • Amco humidification and cooling systems

Barber-Greene Model 705-A

B-G Runabout SERVICE DITCHER

250618



850321

with HYDRA-CROWD

finger-tip hydraulic control of crowding speed...independent of bucket line speed

The Hydra-Crowd — hydraulic transmission of power to the driving wheels — allows the operator of the Runabout, with a twist of the wrist, to keep it going at top digging efficiency through varying soil conditions.

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209-A

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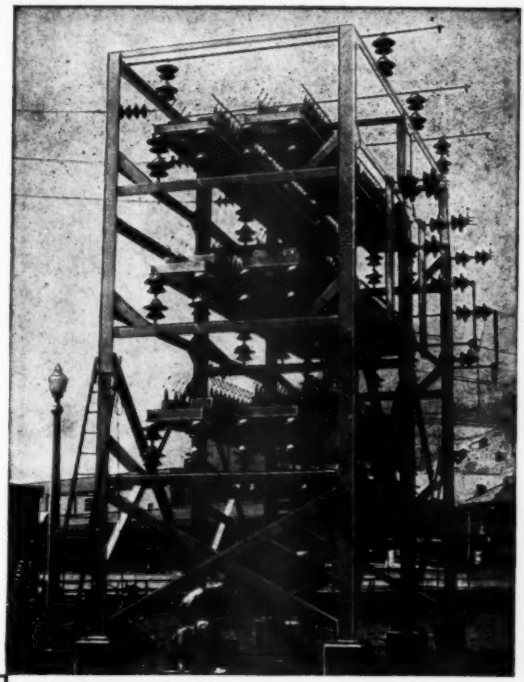
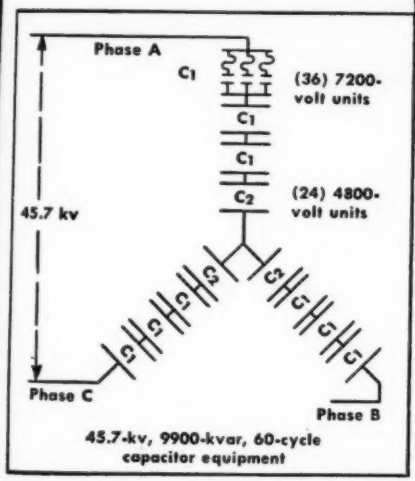
Open-type equipments, for voltages up to 230 kv, consist of 25-kvar outdoor units connected in series-parallel, and mounted on insulators in galvanized-steel structures.



This 9900-kvar General Electric capacitor equipment, operating at 45.7 kv, 3-phase, has recently been installed in West Virginia. It consists of 396 individual 25-kvar outdoor capacitors, connected as shown in the diagram below.



45.7-kv, 9900-kvar, 60-cycle capacitor equipment

This connection diagram applies to the capacitor equipment pictured above

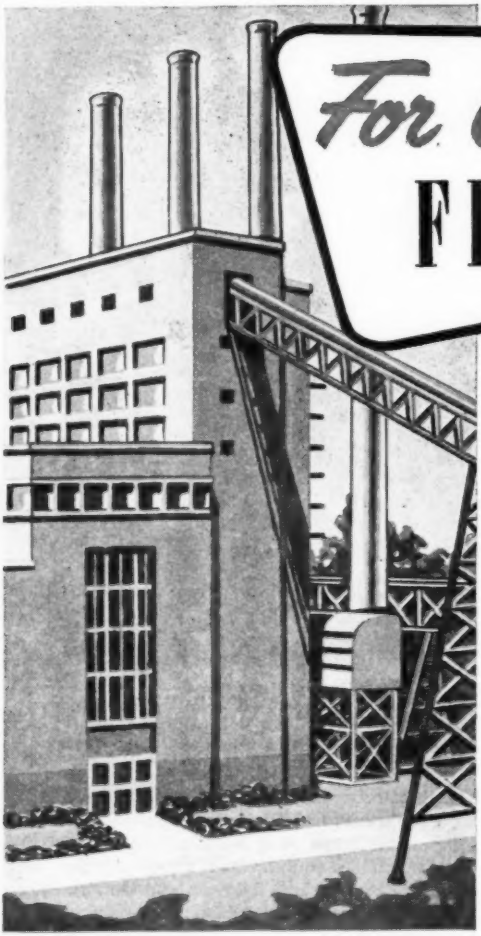
General Electric is now in a position to furnish capacitor equipments for all transmission-circuit voltages (equipments have already been furnished rated as high as 124 kv). These equipments are used on high-voltage circuits to supply bulk kilovars and thus re-enforce the sub-transmission voltages and also reduce thermal loading of substations and generators.

The capacitors used in these equipments are General Electric, outdoor 25-kvar units, rated 2400 to 7960 volts, depending on the circuit voltage. Units are connected in series-parallel to attain the desired voltage and kvar ratings. Individual bushing-mounted fuses are supplied for each unit.

For full information, get in touch with your G-E Apparatus Sales Office. General Electric Company, Schenectady 5, N. Y.

407-33E

GENERAL ELECTRIC



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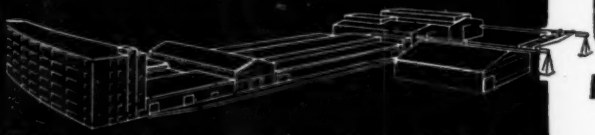

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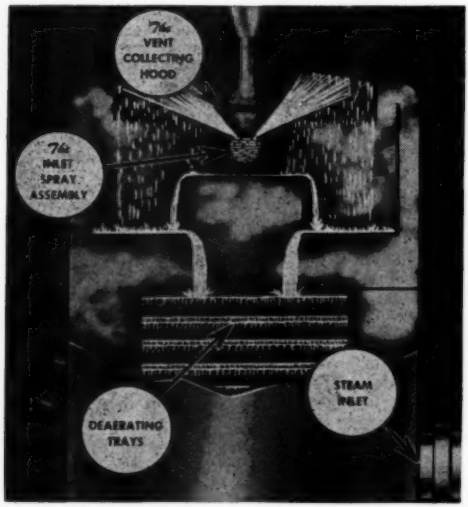

The tubular vent condenser with its many small tubes, formerly mounted on top of the deaerating heater shell, is replaced by the inlet spray unit and vent collecting hood located inside the shell. Saves maintenance, saves headroom, makes a better installation.

The distinguishing mark of any new important station is apt to be the newest type Elliott deaerating feedwater heater mounted upon its storage tank, silhouetted against the sky.

In these new type Elliott deaerating heaters, the tubular vent condenser is replaced with an inlet spray unit and vent collecting hood which normally require no maintenance. Trays, formerly of heavy cast iron, are now of fabricated stainless-steel — light and corrosion-proof. Non-corrodible materials are used everywhere undeaerated water contacts the metal. All in all, the new unit is characteristically Elliott in conception, in engineering excellence, in performance. Bulletin N-16 gives full details. On request.

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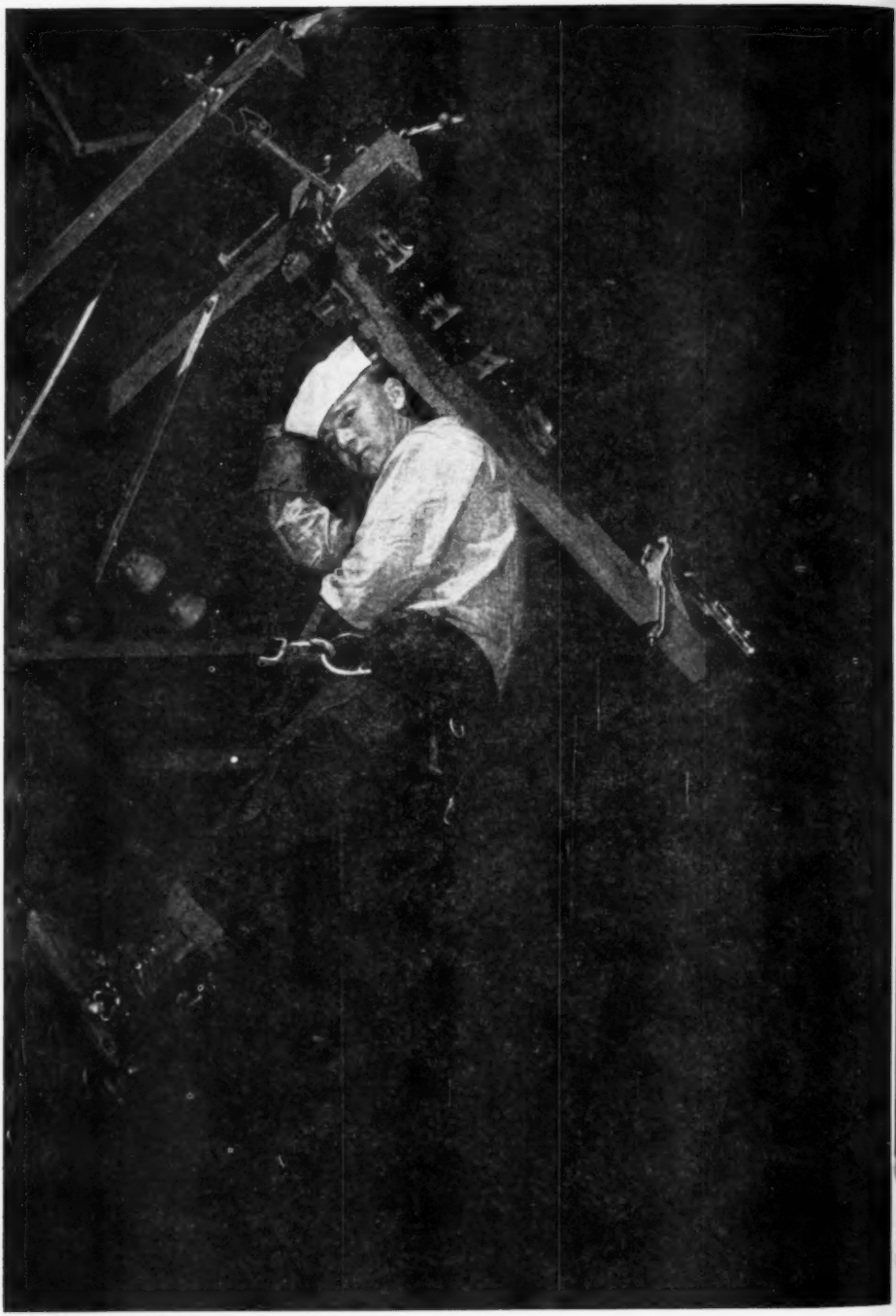
N-1001a

Utilities Almanack

NOVEMBER

8	T^{h}	¶ *Georgia Telephone Association begins convention, Macon, Ga., 1951.* ¶ *Mid-Southeastern Gas Association begins meeting, Raleigh, N. C., 1951.*
9	F	¶ *Northwest Public Power Association, Accounting Section, ends meeting, Olympia, Wash., 1951.*
10	S^{a}	¶ *American Society of Mechanical Engineers will hold annual meeting, Atlantic City, N. J., Nov. 25–30, 1951.*
11	S	¶ *Pacific Coast Electrical Association will hold annual Hawaiian conference, Honolulu, Hawaii, Nov. 29, 30, 1951.*
12	M	¶ *National Electrical Manufacturers Association begins meeting, Atlantic City, N. J., 1951.*
13	T^{u}	¶ *Alabama Independent Telephone Asso. ends convention, Montgomery, Ala., 1951.* ¶ *Missouri Telephone Association ends convention, Jefferson City, Mo., 1951.*
14	W	¶ *Wisconsin Utilities Association, Electric-Gas Sections, Sales-Engineering Divisions, begins annual convention, Milwaukee, Wis., 1951.*
15	T^{h}	¶ *New Jersey Utilities Association begins annual meeting, Absecon, N. J., 1951.*
16	F	¶ *Florida Telephone Association ends annual convention, Daytona Beach, Fla., 1951.*
17	S^{a}	¶ *Institute of Cooking and Heating Appliance Manufacturers will hold semi-annual meeting, Cincinnati, Ohio, Dec. 3–5, 1951.*
18	S	¶ *National Warm Air Heating and Air Conditioning Association will hold annual meeting, Cincinnati, Ohio, Dec. 5, 6, 1951.*
19	M	¶ *National Association of Manufacturers will hold annual meeting, New York, N. Y., Dec. 5–7, 1951.*
20	T^{u}	¶ *Public Utilities Advertising Association, Region 2, will hold meeting, New York, N. Y., Dec. 7, 1951.*
21	W	¶ *Electrical and Gas Association of New York, Inc., will hold Thanksgiving luncheon, Hotel Astor, New York, N. Y., 1951.*



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Public Utilities
FORTNIGHTLY

VOL. XLVIII, No. 10 NOVEMBER 8, 1951

Regional Stockholder Meetings

Consumers Power Company of Michigan is one of those progressive corporations which have tried out the experiment of holding regional meetings for stockholders. Here is an account of the results to date and the reasons why such a policy was adopted.

BY JUSTIN R. WHITING*
PRESIDENT, CONSUMERS POWER COMPANY

FOR each of the last three years the management of Consumers Power Company has made a personal report to its customer-stockholders in a series of regional stockholder meetings in the area it serves.

When we began this program our attitude was experimental. We were not at all sure that the stockholders would be interested in such meetings. We recognized the possibility that we might find ourselves talking to a preponderance of empty chairs. Even though the stockholders did turn out in reasonable numbers, we wondered if they would find the facts and figures of the company's business as fascinating as we believed them to be.

We are no longer in doubt. We have had ample proof that large numbers of stockholders are eager to attend regional stockholder meetings. We have found them keenly interested in their company's affairs, even the statistical aspects. We have heard them ask many questions that showed a good grasp of the problems and prospects of the utility industry. And these stockholder groups, it should be

*For additional personal note, see "Pages with the Editors."

remembered, have included few large investors, few people whose occupations are related to stock or finance. For the most part the groups have been made up of run-of-the-mine citizens of Michigan—merchants, teachers, doctors, widows, carpenters, farmers, factory workers, contractors, representatives of almost every trade and occupation, including not a few employees of our own company. (We have about 1,500 employee-stockholders.)

In our opinion the meetings have been a big success. They have paid dividends in stockholder relations and in public relations. We are glad we instituted the practice of holding such meetings and we mean to continue holding them.

The idea came to me one day during a luncheon in a New York bank. A well-known industrialist was telling about his practice of staging "annual meetings" of his company before graduating classes in business administration at various colleges and universities. It seemed like a splendid plan—for his company; for mine it seemed less suitable. Then the question crossed my mind, "Why not hold a series of annual meetings in our own service area for stockholders who are unable to attend our annual meeting of record?"

Stockholders for whom attendance at the annual meeting is out of the question include practically all those living in the area served by the company, and this is our largest group of stockholders. Consumers Power Company supplies electric or gas service to a million customers, representing a population of about 3,000,000, in 62 Michigan counties. Michigan is the only state in which we operate, but in a legal sense Consumers is a Maine corporation.

When the company was organized some decades ago, certain limitations in the Michigan corporation laws and in the state Constitution made it desirable to incorporate under the laws of another state and Maine was chosen. The same considerations caused many other companies domiciled in Michigan to incorporate in other states, including the General Motors Corporation, the Ford Motor Company, and The Detroit Edison Company. Because we are a Maine corporation, our annual meeting must be held in that state, and of course our customer-stockholders in Michigan could scarcely be expected to travel 2,000 miles round trip to attend an annual meeting.

Yet it seemed desirable that these Michigan investors *should* attend the annual meeting. They had a double interest in the company—first as stockholders, second as customers. I had felt for a long time that a fuller understanding between them and management might be of benefit to all concerned. I talked it over with my associates and we decided to make the experiment. This was in 1948 and our first meetings were held in April, 1949.

Our company is unusual in this respect: Although it is a large company, with about 700,000 electric customers and some 322,000 gas customers, it serves no really large city. The largest population centers in our area are Grand Rapids (175,647) and Flint (162,800). The 1950 census

gave Saginaw 92,352 inhabitants, Lansing 91,694, Pontiac 73,112, Kalamazoo 57,326, Bay City 52,372, and Jackson 50,904. All our other communities are smaller than these, and most of them are very much smaller. In addition to hundreds of cities and villages, we serve many resort areas and more than 100,000 farms.

WITHIN the state of Michigan, and chiefly within the 29,000 square miles served by the company, live 22,666 of the 48,140 stockholders of Consumers Power Company. Of these, 10,821 hold common stock and 11,845 preferred stock. (There is some duplication between the two groups, but it is not large.) After studying the distribution of these stockholders, we decided to hold four regional meetings within a one-week period immediately following the annual meeting in Portland, Maine. The locations chosen were Flint, Saginaw, Grand Rapids, and Jackson, home of our principal office. Printed invitations were sent to stockholders living in or near the four cities, and small stories announcing the meetings were given to the newspapers. Small notices also were run in the advertising columns.

None of the publicity involved any salesmanship. Stockholders and their wives or husbands were simply invited to a regional stockholder meeting in a hotel ballroom or private dining room, with no inducements held out.

GUESSES as to attendance at the first meeting in Flint were mostly in the 50-100 range; actual attendance was 250. At Saginaw the count was 100 despite the fact that the meeting was held on Good Friday evening under very unfavorable weather conditions.

Good attendance in Flint and Saginaw scarcely prepared us for the response in Grand Rapids. As stockholders poured in for the meeting it became obvious that there was no room in the Pantlind Hotel large enough to accommodate the crowd. A hasty switch was made to the Civic Auditorium, which is connected with the Pantlind by an underground passage. When the meeting was called to order, 700 persons were present. The Jackson audience numbered 400, which was less surprising in view of the large number of employee-stockholders living in that city.

All four meetings followed a general plan. The company's division manager called the meeting to order; welcomed the stockholders, wives, and husbands; and introduced the writer, who conducted the meeting. The secretary of the company gave a résumé of the minutes of the annual meeting in Portland, mentioning the number of shares represented and reporting the names of the directors elected. I then reviewed the annual report filed with the meeting and gave the stockholders a little biographical

¶ "WE *have had ample proof that large numbers of stockholders are eager to attend regional stockholder meetings. We have found them keenly interested in their company's affairs, even the statistical aspects.*"

sketch of each of their directors, with particular reference to their business connections and experience.

A discussion of the company's business affairs by the presiding officer followed. Current construction programs were described and financing plans were analyzed. Charts were used to illustrate business trends, and blown-up photographs on easels around the room helped tell the story of construction progress. D. E. Karn, our first vice president, gave a brief report on the operating condition of the property.

Then the stockholders were invited to submit questions. There were always a few questions from the floor but not as many as we had expected to hear. At the end of the question and answer period the meeting adjourned for sandwiches and coffee.

To any other company executive contemplating meetings of this type, let me say that the importance of sandwiches and coffee should not be underestimated. The serving of these refreshments causes the stockholders to leave their seats and circulate. The atmosphere, which hitherto may have been a bit restrained, becomes informal and friendly. Stockholders meet and chat personally with company officials. This gives them a chance to ask questions that a desire to remain inconspicuous keeps them from asking in open meeting or from writing on cards provided for that purpose.

I would also suggest that care be taken about the ventilation of the meeting rooms. We learned early that a poorly ventilated room could mean a torpid audience. It's a deflating experience to see an elderly stockholder doze off while one is talking.

The following year (1950) we decided to hold six regional meetings instead of four. The locations were Grand Rapids, Flint, Jackson, Bay City, Pontiac, and Lansing. And in order to complete our schedule of regional meetings within a few days after the annual meeting, we put three teams of company officials on the road. Mr. Karn, Vice President M. W. Arthur, and the writer each accepted the responsibility of conducting certain meetings with the assistance of the company controller, secretary, or treasurer. In general the meetings followed the proved pattern of the previous year. Attendance was up and, since both the stockholders and officers now knew what to expect, the meetings were even more satisfactory than in 1949.

For this year of 1951 we increased the number of regional meetings to ten, adding Battle Creek, Muskegon, and Saginaw to the 1950 list and transferring the Pontiac meeting to Royal Oak for the particular accommodation of stockholders living in the populous southern end of Oakland county. Presiding officers and attendance figures follow:

Location	*Presiding*	*Attendance*
Battle Creek	R. P. Briggs	390
Bay City	D. E. Karn	260
Flint	D. E. Karn	380
Grand Rapids	J. H. Campbell	1,040
Jackson	J. R. Whiting	530
Kalamazoo	R. P. Briggs	375
Lansing	J. H. Campbell	340
Muskegon	J. H. Campbell	505
Royal Oak	J. R. Whiting	225
Saginaw	D. E. Karn	265
Total		4,310

Regional Meetings Stir Local Interest

"We believe that these regional stockholder meetings have strengthened the pride and confidence of our small stockholders in their company. These stockholders like to be taken into the confidence of their officers, like the feeling that they can ask any question they wish about the company's business and get a frank and informative answer. We think that the regional meetings have helped to establish a background for further investments by these same stockholders in future issues of the company."

Mr. Briggs is our financial vice president, Mr. Karn our first vice president, and Mr. Campbell a vice president.

At each meeting the minutes of the annual meeting in Portland were presented by Secretary A. J. Mayotte or Treasurer L. J. Hamilton. Usually there was a director or two at the speaker's table and one or two company officers in addition to those already mentioned. As in other years, the company's division manager also sat at the speaker's table and called the meeting to order.

The 1951 meetings were even larger and better than those of 1949 and 1950. In general character they were not essentially different from the meetings of previous years but there was an additional feature. After the business session and before the serving of sandwiches and coffee, there was an advance showing of a new motion picture, "Meet Outstate Michigan," which had just been produced by the company as a means of publicizing the territory we serve. It is a half-hour film in brilliant color, highlighting outstate Michigan's industrial, farming, and recreational advantages. It served to add variety to the meetings and the stockholders liked it very much.

QUESTIONS seemed to flow more freely this year, suggesting to us that the stockholders were beginning to feel more at ease. These questions covered a great variety of subjects, but there was one that came up at every meeting and sometimes in several versions. It was this: "When will we have an opportunity to buy more stock?" Needless to say, we were delighted to hear this question, indicat-

ing as it did that the questioner considered his investment in Consumers Power Company a good investment.

Some of the other questions in this year's meetings were these:

How do the company's power production costs compare with those of other companies?

Why is Consumers Power Company a Maine corporation and why doesn't the company transfer its legal residence to Michigan? (Chiefly because the Michigan Constitution limits the life of a corporation to thirty years, something which must be considered in connection with utility financing.)

Wouldn't it be wise for the company or its common stockholders to buy up the preferred stock and save that interest?

Do you think the government will ever take over the utilities?

Which is the better investment, common or preferred stock?

I HAVE quoted some of the less surprising questions. We were asked about all sorts of things, including the quality of the fishing at various company dams. When other questions lagged, someone usually asked "When do we eat?"

This reminds me of a letter that came in from a stockholder in Grand Rapids after our first meeting there. This gentleman wondered why we hadn't stated in the invitation that sandwiches and coffee would be served. Lacking this information, he had eaten a hearty dinner before coming to the meeting. Incidentally, we *did* mention refreshments in the invitations to this year's meetings. We also mentioned the motion picture showing. Possibly these features helped bring out the stockholders in such large numbers.

WHETHER other companies would have similarly favorable experience with regional stockholder meetings, I don't know. As I pointed out earlier, the size and population density of our service area are somewhat unusual. Another consideration that has some importance is this: Consumers Power Company was developed on a customer-ownership basis. In the early days the company tried earnestly and with much success to persuade its customers to invest in preferred stock. We have many customer-stockholders today who bought stock more than thirty years ago. They take pride in their company and welcome an opportunity to meet with the company officers and talk about Consumers' affairs.

Again let me emphasize that these stockholders are not financial people but rank-and-file Michigan citizens. Many of those in the Grand Rapids area are frugal Hollanders. There are a lot of farmers in our stockholder family and a growing percentage of factory workers. We were pleased to see a number of Negroes at this year's meetings.

In these days of high income taxes and high wages, statistics show that the wage earner has relatively more money to invest, whereas the large investor of other days has relatively less. If the utility companies of this country are to keep abreast of their financing requirements and expand their electric and gas facilities to meet the rocketing needs of their customers, then they must enlist the interest

and the investments of the small investor.

We believe that these regional stockholder meetings have strengthened the pride and confidence of our small stockholders in their company. These stockholders like to be taken into the confidence of their officers, like the feeling that they can ask any question they wish about the company's business and get a frank and informative answer. We think that the regional meetings have helped to establish a background for further investments by these same stockholders in future issues of the company. The frequently heard question "When will we have an opportunity to buy more stock?" to us seems highly significant.

THE public relations value of these meetings is scarcely less important. A well-informed stockholder living in the company's service area will spread his knowledge among other customers of the company. If he encounters misinformation, he is in a position to correct it.

Newspaper coverage of regional meetings has been gratifying. No special effort has been made to obtain newspaper publicity, but reporters and photographers have been welcomed if they appeared. Much favorable publicity has resulted.

Let me summarize by saying that the management of Consumers Power Company is well pleased with our regional stockholder meetings and believes that its customer-stockholders share this feeling. Such get-togethers help to dispel any atmosphere of mystery that may exist and to give the stockholders the feeling of being real partners in the company, which of course they are.

Benefits move in two directions. Stockholders not only get acquainted with management, but management also gets acquainted with the stockholders. While we are informing the stockholders about their company, we pick up a lot of information and counsel from our stockholders, and this is very helpful to us in maintaining proper perspective as we chart the course of company affairs. If we have any major problem before us, we tell our stockholders about it. Thus it becomes their problem also and we get the benefit of their comments and suggestions.

I HAVE a very deep-seated feeling that the more our stockholders and our customers know about the company and its problems, the easier it will be to solve those problems. Whether we like to live in a goldfish bowl or not, that's where all of us are finding ourselves these days. Regional stockholder meetings are another—and a valuable—means of facing up to the facts and problems of a very resilient and fast-growing business and of sharing our joys and disappointments with some of the people who own that business.

¶ "TODAY, *there are too many people eating without working. Those who are working are providing food for them.*"

—CLIFFORD F. HOOD,
Executive vice president, United States Steel Company.

Better Publicity for Utility Regulation

Does commission regulation for public utilities need "good press" or professional publicity techniques? This article is written by a veteran newspaperman, now on the staff of the California Public Utilities Commission. He tells us how this has been organized in California and the results accomplished.

By FRANK C. SULLIVAN*

WRITING in a recent issue of the FORTNIGHTLY,[1] the Honorable John C. Doerfer, chairman of the Wisconsin Public Service Commission, cited a definite lack of understanding by the public as being among the most important and provocative problems vexing utility regulatory bodies today.

After furnishing instructive examples of criticism which are rooted in ignorance of the adjudicatory processes and corollary techniques, he concluded that "whatever the medium, it is imperative that some means be found to bring to the public sufficient understandable information so as to direct criticism along constructive lines. A democratic government has no greater enemy than an uninformed public."

To that sage observation, every individual associated with a utility or a regulatory commission will doubtless echo a hearty "Amen."

For Mr. Doerfer has not only hit the nail on the head in succinctly stating the nature of the problem. By relating that problem to its possible impact upon the advancement—or continuation—of our way of life, he has lifted it beyond the comparatively narrow area in which it appears to rest into the far larger sphere where it unquestionably belongs.

HE who would attack the modern regulatory processes, with their reliance upon highly technical and scientific methods—the system of impartial engineering studies, public

*For personal note, see "Pages with the Editors."

1 "What a State Commission Does—and Why," by Honorable John C. Doerfer. PUBLIC UTILITIES FORTNIGHTLY, Volume XLVII, No. 12, page 771, June 7, 1951.

hearings, expert testimony under oath, privileges of cross-examination of witnesses by all interested parties, and, finally, the issuance of formal decisions with well-established avenues of review — faces a serious dilemma indeed, since there are only two remaining alternatives: to turn the clock back to the old days of the "public be damned" attitude espoused by some utilities before regulation, where the going rate was all the traffic would bear—an unthinkable expediency; or to embrace outright government ownership.

The problem of public relations inherent in connection with the rate situation is, then, not to be taken lightly by anyone concerned.

To its solution—or, at least, its alleviation—we are constrained by real necessities to direct our serious consideration, bearing in mind that its urgency has been heavily underscored during the present inflation, wherein a utility, no less than an individual, is continuously confronted with rising wages, taxes, and materials costs.

During such an era, utility management, alert to its responsibility of earning a fair return for the investor, may be required to petition not only once, but possibly several times, for rate increases in order to maintain that return at levels required to service debt and to borrow additional funds for capital expenditures.

Such repetitive requests, while admittedly forged in the crucible of necessity, are apt to develop and encourage the type of criticism to which Mr. Doerfer alluded.

ASIDE from a natural human disinclination to pay more for anything if one can reasonably avoid doing so, one of the factors to consider in analyzing an information program lies in realizing that many persons—particularly those on fixed incomes, have failed to participate proportionately in what seems, on the surface at least, to be a sort of prosperity based on a tweedledum, tweedledee spiraling of wages and prices.

It is these individuals—large groups of unorganized white-collar workers, pensioners, retired folk, government workers, Federal, state, and city—who spur city governments, consumers' groups, and, on occasion, delegates of the so-called "lunatic fringe," to enter the lists in opposition to what frequently prove to be justified and necessary increases in utilities' rates.

THERE are several other components of the problem. These include:

1. The question of how efficient has been the over-all public relations program of the utility applying for the increase.

2. The general policy attitude of the press toward rate increases.

3. The boring complexity of the usual rate hearing, requiring a determination of what portion of its material constitutes—or can be made to constitute—news.

4. The difficulty of obtaining rate case reportorial coverage from the newspapers and space in the light of present labor and newsprint costs.

While some phases of these points are interrelated, each is sufficiently important and distinct to warrant being stated separately. Each must be analyzed and weighed in devising an effective program. Moreover, it should

be noted that the scope of the discussion has been narrowed to include only the press—since that is the primary and often the sole medium of communication involved in the ordinary rate case.

How successful and with what skill a utility has prosecuted a broad community and employee relations program can neither be overlooked nor underestimated in assaying the manner in which the public reacts to its application for higher rates—and, after the public, the press.

For example, there are some utilities, fortunately few in number, which have paid scant attention, if any, to the highly specialized task of winning public confidence and, with this confidence, subsequent favor. Indeed, there are cases where some utilities, instead of making friends, have alienated the public to the point where, no matter what step they might take, the public and the press could be depended upon to unite in opposing it.

Hence, when this type of utility appears before the bar of public opinion, as it were, to seek an increase in rates, it is immediately viewed with a suspicion not readily justified in light of the fact that it really may need and legally be entitled to rate relief.

But—and here's the rub—latent or active dislike and distrust may create a hue and cry which result in city councils and county governmental bodies passing resolutions of vigorous opposition and the press publishing thundering invectives in editorial columns, to the point where very real and effective legal opposition develops. Then occurs a lengthy battle. Reflecting as in a mirror the public attitude, the press emphasizes whatever weaknesses may lie in the utility's case, and under the circumstances it is difficult for either the utility or the regulatory body involved to escape the type of vicious and ignorant criticism illustrated so graphically by Mr. Doerfer.

The obvious remedy in such instances which are, to repeat, fortunately few in number, is for the utility to see to it that its relationships with the community and its employees are firmly established on a basis of mutual respect and trust.

Of course, most utilities are aware of and sensitive to the power of public opinion in this modern world. Many of them go to some pains and expense to be sure that their message is competently designed and adequately disseminated to the public via the several avenues of communication available. One facet of their reward lies in softening uninformed and unintelligent resistance to a degree that may prevent the focalizing of bitter, and prejudicial, opposition at public hearings.

How important this preliminary educational process can become is easily understood when we realize

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that such opposition, like the jealousy described by Shakespeare, "often doth feed upon itself."

As striking proof of this, those familiar with the progress of recent large rate cases will recall that, on occasion, protestants have stepped to the bar to offer purely perfunctory opposition to a proposed rate increase in a few well-chosen words, only to find to their later astonishment and delight, that they have become subjects of laudatory newspaper mention.

Having once unwittingly attracted such powerfully vocal allies, the erstwhile rather passive protestants become bellicose defenders of the public weal. The newspaper support thus has the effect of solidifying and intensifying opposition, particularly should such opposition be grounded, as it sometimes is, on political expediency.

This naturally develops the next question—that relating to the general policy of the press in connection with utilities' rate increases.

To the observer, it would appear that newspapers today, by and large, shape their policies on resistance to utilities' increases—or if perchance they indicate assent, they are apt to do so grudgingly.

Surely—the uninitiated may say—the press recognizes the upward trend of costs which the utilities have encountered right along with the newspaper itself. The answer is that certainly the press realizes the economic squeeze in which utilities—as everyone else—are caught during an inflationary epoch. But realization and understanding sometimes lie a long way from acceptance.

What are then the explanations which furnish clews to why the press tends to "play up" the protestants during rate hearings and frequently follows such news coverage by taking positions of opposition to the suggested increase in editorial columns?

There are several, of varying and imponderable weight, as is usually the case.

First, not necessarily because of either importance or effect, everyone should remember that working newspapermen are indignant charter members of the white-collar group which has suffered seriously from the inflation.

In metropolitan areas, they are employed on a contractual basis, with realignment of their salaries dependent upon bargaining and negotiation. Simply as citizens with moderate incomes they do not like to pay higher monthly prices for any service—particularly utilities, since they, like all of us, had become conditioned over the years to receiving utilities' services at a comparatively cheap price.

The major difference between them and other citizens who feel similarly, is that they have ways and means of expressing their views through helping to form newspaper policy, consciously or unconsciously slanting their stories of rate cases and writing opposition editorials when authorized to do so. (On this very point, I recollect distinctly with what personal elation the information was received by working newspapermen in San Francisco last June that the California Public Utilities Commission had declined to increase Pacific Greyhound Line's Bay area commutation fares. Many of these newsmen

Press Recognition *versus* Press Acceptance

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were Greyhound "commute" patrons, and an increase in such fares would have directly impinged upon their own pocketbooks.)

Second, it cannot be denied that there is a general scramble under way to capture the customer's dollar, and it seems that some newspaper publishers feel that rising utility prices inevitably tend to diminish the individual's spending with merchants who are advertisers and in consequence financial supporters of newspapers. In times like the present, when daily newspapers are falling like tenpins over the nation because of overhead costs that are becoming insupportable, this is a factor that should not be overlooked in reviewing the public information problem.

Third, a quite obvious reason to one who enjoys a technical understanding of what constitutes news, in conformance with the newspaper yardstick, is that groups of customers or others who battle against higher rates are willy-nilly creating interesting news and are thus, in some measure, helping to push the circulation curve upward. It should be borne in mind that this upward trend is something most publishers are trying to bring about, tooth and nail.

SUMMARIZING the general press policy situation then, it would seem that its attitude toward rate increases is likely to be more unfavorable than otherwise.

Allied to this is the layman's difficulty in comprehending what the usual rate case is all about. He is aware that Blank Corporation, from which he receives a certain necessary utility service, wants to raise his rates and that this suggested increase is somehow

tied in with depreciation, working cash capital, administrative expenses, rates of return, regulatory statutes, and regulatory bodies, which he often mistakenly believes were established to prevent utilities from charging him more than he is presently paying, forgetting that, as an offset to operating under strict regulation, they are entitled to a fair return.

The layman's ignorance of the technical phases of the regulatory process, the technical evidence adduced at public hearings, and the technical criteria used to test the adequacy of rates, extends to many working newspapermen who are required, through the exigencies of their occupation, to report and/or write the story. In complex cases they always find it difficult—and sometimes impossible — to develop news as they have been taught to define the word.

Since such hearings are unrewarding to cover, in the main, and highly skilled reporters may return to their offices without comprehensible news from such forays, it is not always easy to woo newspaper coverage for them, despite their manifest importance from the standpoint of potential pocketbook impact. And the possibility of coverage is inclined to diminish in direct ratio as the amount of dollars involved lessens.

THE far too frequent reaction of the editor to the question of coverage for all but the largest of rate hearings becomes: "Oh, that stuff? Nobody can understand the testimony anyway. We'll just sit tight and wait for the decision."

This point of view sometimes results in confining actual news of the rate case to a few words on the utility's plea, as set forth in its formal application, and to the decision issued by the regulatory body on the evidence.

The final consideration which may influence the resolve of the editor to delay coverage until the decision is forthcoming relates to present-day newspaper costs.

In the old days—notably that period anterior to 1934 or 1935, when the American Newspaper Guild came into being — newspapermen worked a 6-day week, around the clock, if necessary. Today, they are employed on a 40-hour per week basis, and any time worked over eight hours is compensable as overtime at a higher rate. This means that a reporter's time is worth money to the newspaper —and under no circumstances must it be wasted. If news can be picked up quickly, well and good; if the matter of its production at a hearing is either slow or chancy, then it might be better not to risk sending a man to the commission's press table.

Moreover, newspaper publishers everywhere are seriously concerned over the recent rises in newspaper production costs, particularly relating to that of newsprint. Cost problems affect their consideration of the question of news coverage and space allocations today to the degree that an interesting monograph might be written on the broad subject of news treatment now as compared to, say, two decades ago.

THE practical result of all this is that the public may awaken one morning to black headlines shouting the shocking information that on a

certain date in the near future, the rates for a specific utility service are to be increased.

Impact of this blow might conceivably have been softened if the citizen had received prior knowledge, repetitiously and over a period of time, that the utility had been grappling with the same inflationary forces which have changed the conditions of his own life.

It is this prior knowledge that the citizen must have if he is to acquire that "sufficient understandable information" which has been suggested as requisite to direct his criticism along constructive lines.

At first blush this would seem to comprise a job of some enormity, but such is not the case. Many steps can be taken pointing toward accomplishment of the objective.

However, we must postulate our reasoning, at the outset, on the premise that, no matter what we do, we can hardly frame a public relations program that *will make citizens happy to receive utility rate increases.*

The best we can bargain for is to attain a qualified success exemplified by their intelligent acceptance of decisions authorizing such increases.

It would seem to be a truism that an obligation rests upon both the utility and the regulatory body to explain in lucid language, and by whatever means of communication are available, the facts regarding a rate increase. As a matter of fact, we might go further; and by doing so approach the point stressed at the beginning: The public interest, which is the keystone of our democratic arch, demands that the public be adequately and honestly informed regarding the grounds upon which a utility seeks an increase, and the findings upon which the regulatory body decides to grant the application, either partially or in toto.

The preliminary facts might well consist of information on the utility's cost increases, its necessity to earn a specified rate of return in order to continue its usual standards of service, and its plans to seek an upward revision in its rates.

It is a comparatively simple matter for the utility to furnish this news through paid advertising and in the news columns of the press—prior to the actual opening of the public hearings; or, what is even more effective, include it in its formal application filed with the commission.

In preparing this application, utility counsel might well take a page from the public relations practitioner's book and be certain that the language

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of the application is couched less in technical or abstruse legal terminology and more in the language of modern usage.

Much of such easily comprehended material can be simultaneously drafted into a press offering timed for release when the formal petition is docketed by the regulatory agency. When the application is received by the regulatory body it constitutes news—in the best technical definition of that word, and as such stands an excellent chance of capturing a prominent position in the press.

In California, almost all of the major utilities pursue this practice—and while it would possibly be an exaggeration to say that this step has won public approval of their rate requests, there can be no question but that through using it they have been enabled to present their story to the public completely, and without bias, before they are required to offer their evidence at subsequent public hearings before the commission.

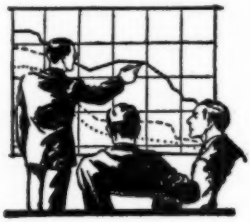
For a decade or more before 1947, in California, the present public information problem did not exist, and for a readily apparent reason: It was not until 1947 that the postwar inflation, which had previously been adversely felt by the man in the street, overtook the major utilities. Before then the news had been very pleasant news, indeed. Rate *decreases* had been the order of the prewar era, and newspaper headlines heralding these far and wide had made happy reading for the citizen.

The first big California rate filing to shatter this idyllic calm was that of the Pacific Telephone & Telegraph Company. On February 14, 1947, this utility applied for increases in California intrastate rates of $20,195,000. On June 24, 1947, the California commission issued an interim decision authorizing a rate increase of $10,500,000 annually; and on August 6, 1947, the company applied for $20,090,000 in addition to the $10,500,000. On August 26, 1947, the commission authorized a second interim increase amounting to $5,500,000, and on December 17, 1947, a third interim increase, amounting to $6,460,000 annually. On December 31, 1947, the company filed an amendment seeking $8,800,000 additionally, and on April 6, 1948, the commission issued its final decision in the long series of hearings.

The filings, interim decisions, and final decision, constituted a year of big and complex news in the California utility field; coming after long years of rate reductions the telephone case pointed up the necessity of devising and organizing an efficient method for handling its public informational phases.

The techniques finally developed during that hectic year were formulated at first from the trial-and-error approach by both the publicity representatives of the telephone company and the author; but, as the case developed, suggestions were pooled until finally procedures were established which seem to have won acceptance among most of the major utilities.

Utilization of the techniques is planned to overcome, as far as practically possible, the difficulties described in providing understandable information described at some length in this article. They are designed to



Giving the Reasons for Utility Rate Increases

"It would seem to be a truism that an obligation rests upon both the utility and the regulatory body to explain in lucid language, and by whatever means of communication are available, the facts regarding a rate increase. . . . The public interest, which is the keystone of our democratic arch, demands that the public be adequately and honestly informed regarding the grounds upon which a utility seeks an increase, and the findings upon which the regulatory body decides to grant the application, either partially or in toto."

furnish the press and public with objective and complete news on the specific rate case involved; and you will note that both objectivity and completeness are stressed, since one of the requirements for success, from the standpoint of the utility, is that it furnish favorable or unfavorable information with equal efficiency and aplomb.

The first step, as already indicated, is for the utility to present to the press a concise, simply written release based upon the formal application *when the application is filed with the commission.* The release should be completely and objectively reflective of the information contained in the application. In doing this, the release offers an unparalleled opportunity for the utility to tell its story to the public through the medium of the news columns—a far better place than through the advertising columns, since these are always subject to the implication of being self-serving.

As far as the method of release is concerned, we have found that the newspapermen who cover the California State building "beat" prefer to handle the press release based on the application rather than having the utility service their city desks. Consequently, the utility release is placed in the commission press basket for "beat" perusal, along with copies of the application itself, which are used by the reporters for comparative purposes.

What are the advantages of preparing this release and presenting it in this manner? There are several, among them being ease and speed of handling. Reporters, if they could afford the time—which they cannot—

congenitally dislike having to wade through page after page of application material, with segments of the "story" occurring on each page. If the release were not available, the tendency would be for the reporter to telephone only the barest details, skipping whatever seemed obscure, complex, or verbose. The release virtually assures the utility of getting much of its story to the reading public, in the manner deemed most desirable. From the public relations point of view, it is likely to establish a friendly relationship with the "beat" reporters, grateful for the consideration shown them.

THE second step in the informational process occurs a day before public hearings are due to commence on the application. At this point the commission press office offers to the "beat" reporters a file copy of the original utility press release—to refresh their recollections of pertinent points to develop at the hearings—and additional information, such as the list of probable appearances, if available; name of the presiding commissioner and/or examiner; information on how long the projected hearings are apt to continue; and any further information which may be at hand regarding identity of witnesses. When the hearings open, the commission's press officer becomes available to give whatever additional factual information may be required by the press. Quite frequently, he is called upon by the "beat" men to offer his judgment as to whether the hearing deserves what is termed "office coverage"; that is, whether a special reporter should be sent from the office to sit at the press table and develop a special story on the hearing. The alternative to this would be for the "beat" reporter to drop in at the hearings as he sandwiches this task in with his other work.

Whether an office reporter is sent, or whether the story is covered intermittently by the "beat" man becomes immaterial in the light of the practice developed during the telephone case to meet such a situation effectively.

Before the case goes to hearing, press relations employees of the utility involved have worked with utility counsel and with each proposed utility witness.

As utility counsel, therefore, opens the hearing with a preliminary statement, the complete statement—and possibly briefed newsy high lights from it—is made available at the press table by the utility representative.

WHEN the first utility witness takes the stand, the utility press representative at the press table hands to each reporter covering the hearing—or to the "beat" reporter when he appears on his rounds—two documents: (1) a copy of the witness' testimony, in exact question and answer form, as it is given from the stand; and (2) a briefed, highlighted report of the testimony, presented factually and in laymen's language.

Testimony of each succeeding witness is handled in the same manner.

The advantages of this method of presenting the informational phases of the utility's case should be apparent, but it will do no harm to list them.

First, whatever the witness says is news *per se*, since it is presented from the stand during a public hearing, and as news in the technical sense

of the term, is usable in the press.

Second, the news offered by the witness is easily grasped by the reporter if it is made understandable through prior interpretation into layman's language.

Third, the reporter, who doesn't enjoy unnecessary intellectual labor any better than anyone else, finds the material handed to him susceptible of easy and swift assimilation.

So, the net result is, that whether the newspaper feels the hearing, in the light of present costs, rates coverage or otherwise, or whether the "beat" reporter is busy elsewhere or not, is really unimportant. In a 5-minute visit to the press table, a reporter is enabled to pick up a complete, intelligible, and unbiased account of everything that has happened until that moment, and of every word said. From the reporter's standpoint, the rest is simply selection, further highlighting, condensation, and casting the material into newspaper story form.

Exactly the same procedure is followed by the press representative of the commission, when the commission staff case is presented, and the results have been found to be uniformly good.

IN all verity, it should be pointed out, however, that certain unpredictable conditions may adversely affect these results: A sudden shortage of newspaper personnel due to demand elsewhere or a temporary stringency regarding newspaper space because of peculiar make-up conditions, or heavy stories breaking elsewhere which may claim space, might nullify rate case coverage completely on even the newsiest day of the hearing.

The problem of how to handle cross-examination so as to be of assistance to the press in the absence of office or "beat" coverage offers some difficulties of a technical nature.

Every newspaper reporter realizes, for instance, that the only manner by which a "story" may be developed from any cross-examination is to sit through what may be hours of dullness until suddenly the one question—with the one answer—occurs on which to "build a lead," and thus make a story. Here the newspaper labor cost situation intrudes, again, and unless the hearing is of transcendental importance, reporters are likely to eschew coverage of a hearing during its cross-examination phases. Yet it is exactly during such times that the most interesting and informative news may develop.

To overcome this situation, it is common for press representatives of the utilities, during large rate cases, to devote some of their time while at the

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press table to taking notes of cross-examination, and later making these available, on inquiry, to the reporters. The point to be observed by utilities' representatives here is to be certain that they offer *all* the notes, *whether favorable or unfavorable,* to their case, for if the press should discover that the information only related a single point of view and was designed to suppress unfavorable publicity, the reporters would immediately lose confidence in the utility's representative with the result that his future effectiveness with the press might be seriously abridged.

SOMETIMES the commission press representatives may present cross-examination information to reporters when they are unable, for one reason or another, to be present at the hearing, but this entails elements of risk, since there is ample opportunity for error in transmitting such information and in an adversary proceeding this might prove calamitous. Moreover, it is to be doubted whether the responsibility of the commission and the state can be said to extend to carrying the expense for furnishing outright news coverage to the press on material which, after all, falls clearly within the scope of press responsibility to handle.

In conclusion, there is only one final phase of the rate increase application which requires consideration—and that is the decision itself when it issues from the commission.

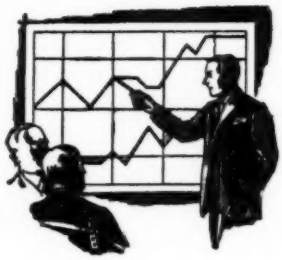
The ordinary method for furnishing news based on the decision would be to write a newspaper story on it and accompany the decision with the story when it is offered to the press. But the California technique, developed in the last few years, differs from this.

Experience led to the conclusion that of far more assistance to the press than the usual story would be an offering which combined the elements of both newspaper story and analytical digest.

THUS, it is customary now to accompany important decisions with such a hybrid release. It is created on the theory of stating the facts of the decision in a brief, bald, nontechnical manner in what appears to be the order of their importance—*not from the point of view of a newspaper reader, but from that of a newspaper rewrite man.* In preparing the release, the commission press representative asks himself this question: If I were writing the newspaper story of this decision what would I require? Those requirements govern the inclusion of material in the release. Judging from the reaction of the press, they have been found suitable for conveying the type of understandable information which is one of the important requirements of the utility and the regulatory agency in this turbulent era.

¶ "THE *social planners . . . are looking upon the present national emergency as a heaven-sent opportunity to push through their socialistic schemes.*"

—ARCH N. BOOTH,
Executive vice president, Chamber of Commerce of the United States.



The Investor Eyes the Rate Of Return

The question of the allowable rate of return for public utilities is one of great interest during an inflationary period. Regulatory commissions are aware, or should be aware, that additional capital must be obtained in a competitive market from those who are willing to invest in the particular company, regardless of the commission's judgment as to the sufficiency of the rate of return.

By JOHN F. CHILDS*

For sale—$1.5 billion of securities. That is what the electric division of the utility business alone will "put on the block" this year and each of the next two years. This will include the sale of about $500,000,000 each year of common stock. Other divisions of the utility industry will also have to sell large amounts of securities. This financing must be done if the consumer is going to continue to receive adequate service. In other words, the investors must buy the securities.

Before he parts with his hard-earned savings, the investor can say to himself: "Should I put my money in stocks, and, if so, should I put it in utility stocks, industrial stocks, or railroad stocks?" There is absolutely nothing to compel an investor to venture into utility stocks.

It would appear that as part of the team of our type of economic society, the investor should receive fair treatment at all times, even if no securities have to be sold. However, today, it is absolutely essential that the investor be given reasonable treatment so that he will buy the securities.

The professional investors are continuously studying the outlook for various types of securities to determine which ones to purchase. And, the uninformed investors, the doctor, the lawyer, the merchant, the farmer, are often on the phone talking to their investment advisers. Typical of state-

*For personal note, see "Pages with the Editors."

ments they make are: "Industrial stocks seem to have done much better than utilities. What do you feel is the outlook for utilities?" By outlook the investor means prospects for earnings. This in essence is a matter of rate of return and this article is directed at investors' attitude toward rate of return.

WHAT can an investor hope to receive from a utility stock? Every investor would naturally like both income and appreciation. However, utility stocks have not offered any general opportunity for growth, because of the regulated nature of the industry. They have had to be bought primarily as a source of income.

The fact that industrial stocks have done much better during this inflationary period cannot be overlooked. So far, the investors have been willing to put up their money for utility stocks, but it cannot be predicted that they will be willing to do so without any recognition of the inflationary situation and in face of the fact that industrial stocks have performed much better than utilities and given the investor some real protection against inflation.

Truslow W. Hyde, Jr., in an article in the April 26, 1951, issue of PUBLIC UTILITIES FORTNIGHTLY magazine, expressed the investors' thoughts on this aspect.[1] Therefore, rather than cover this important point again, I will limit myself to a discussion of investors' attitude towards rate of return under conditions as they exist today, or in other words as though utility securities are looked upon primarily as a source of income rather than appreciation.

There is nothing in regulation which guarantees that investors will receive a fair rate of return if the utility business becomes economically unattractive—a very substantial risk. By far too little emphasis has been placed on the losses that investors have suffered in the utility field. The best examples exist in the traction business, which was once the attractive part of the utility business when the electric industry was in its infancy. This industry has been in the doldrums for so long that its condition is more or less accepted as a matter of course. However, consider the losses sustained by investors. Merely look at the earnings results of four of the largest transit companies in 1950, as shown in the table below.

IF an effort is made to raise traction fares a few pennies the public and politicians scream "bloody murder."

[1] "Management's Dual Responsibility for Utility Rates," by W. Truslow Hyde, Jr. PUBLIC UTILITIES FORTNIGHTLY, Volume XLVII, No. 9, page 531.

EARNINGS OF FOUR OF THE LARGEST PRIVATE TRANSIT COMPANIES IN 1950

Company	*Capitalization*	*Gross Income*	*Return on Capitalization*
"A"	$37,352,000	$1,291,000	3.46%
"B"	21,501,000	690,000	3.21%
"C"	23,114,000	449,000	1.94%
"D"	38,127,000	1,749,000 Loss	Loss
	$120,094,000	$ 581,000	0.48%

It should be the investors who scream. They have never received any excessive profits in any of the divisions of the utility industry. And they have received substantial losses in some. Is it any wonder that investors worry about having earnings maintained at a reasonable level so they will receive adequate protection.

NET earnings may increase in either of two ways. They may be self-generated or, in other words, increase from improvement in operations, or they may result from rate adjustments.

Investors realize that the economic characteristics of the manufactured gas and traction business have been responsible to a great extent for unsatisfactory earnings. However, they are also painfully aware in many instances of how such companies have had to struggle and wait for rate relief while earnings were obviously below anything reasonable, at a time when rates could have been raised economically.

One of the reasons why the electric industry has been favored by investors, is that in the past not much reliance has had to be placed on rate increases. In fact, there was even a period when earnings showed remarkable resiliency to rate decreases. Thus, investors did not in general have to look to regulation to provide adequate earnings. It appears that because of increasing costs and the large amounts of capital required, the electric industry will have to place more reliance on rate increases to assure adequate earnings. Therefore, today the matter of obtaining an adequate rate of return through regulation is even more important.

Thus far I have attempted to emphasize the suspicion of investors toward earnings that are dependent upon rate increases in order to be maintained at a reasonable level. I will now make a few comments about specific matters which are of concern to investors. Let me just point out two such matters:

First: In years of high industrial activity the return should be greater to compensate for bad years;

Second: Property additions requiring financing make an added burden of charges on more securities a certainty, and lack of assured earnings to compensate may add a serious obstacle to financing.

THE first point really needs little explanation. It is that investors expect the rate of return may fall during adverse business conditions and they recognize the difficulties that may be encountered under such circumstances in attempting to obtain rate increases. Therefore, it is only reasonable to expect that during periods of

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high economic activity the rate of return should be higher in order to compensate. While it is apparently a simple matter, it is obviously a most important one from the investor's point of view. And yet in rate decisions it seems to be given very little if any weight.

Second, the ability of a company to finance depends to a great extent upon two factors: (1) the condition of the securities market, and (2) the earnings outlook for a company. The securities market is sensitive and unpredictable. If a company faces a prospect of uncertain earnings, its financing program thus faces a double risk. When new securities are offered, investors know with a certainty that earnings will have to bear the burden of the charges on the new securities. If, for example, common stock is offered on a 1-for-10 basis, it will mean that there will be 10 per cent more stock to divide into earnings to arrive at the earnings per share. Without any compensating factor this will mean a 10 per cent decrease in earnings per share.

WHEN new property is added, earnings do not start to accrue until after the construction is completed, whereas financing may be done at the start of the construction and thus the charges on the new securities become an immediate burden. Theoretically, if interest is allowed during construction the rate base will be increased and if earnings are subsequently allowed on this increased rate base the investor will be taken care of except for the lag between the time when the securities are sold and the property is added. That is the theoretical side of the picture. However, the investor must take the practical point of view. At the time the securities are issued the additional earnings are only a possibility, and whether they are ever realized depends on many circumstances. Investors can cite instances where earnings per share of common stock were held up by interest during construction, only to drop off when the interest during construction disappeared and earnings failed to increase. If at the time of financing, a company's earnings are already inadequate, the seriousness of the matter should be obvious; particularly in view of the time taken to get a rate increase as borne out by actual history of rate cases. Thus, as a very practical matter, during a period of heavy construction which the utility industry faces for some time to come, it is most important that the rate of return be sufficient to compensate for anticipated financing.

NOW I would like to make a few remarks about some of the component parts which go into calculating the final over-all figure for rate of return, such as underpricing, dividend policy, capitalization ratios, and differences in the divisions of the utility industry and companies within the industry.

First, as to underpricing—the difference between the net amount the company receives for a security in relation to the open market price for that security, before the market price has been affected by pressure of the new issue. In very favorable security markets, it may be possible to offer new issues close to the market for existing securities. However, to rely entirely

Relative Treatment of Consumer and Investor

"WHEN one studies what investors have received in recent years in the utility field in relation to how well the consumer has been treated and in relation to other costs going into utility service, one wonders why companies should encounter trouble in trying to get satisfactory rate increases. A mere glance at basic statistics of the electric industry, brings out the story vividly."

on indexes of outstanding issues in developing the cost to raise bond and stock money, without proper allowances for underpricing, will result in most misleading conclusions over the long run. For example, it is interesting to note that in April, 1951, shortly after the Federal monetary policy changed, an index of AAA bonds showed a yield of 2.87 per cent. However, in order to sell new issues, bonds of a similar rating had to be offered at better than 3.10 per cent yield to the public, which meant an even higher yield to the company after allowing for underwriting commissions and expenses.

The common stock market is a most delicate one. At times, common stocks definitely cannot be sold. In a boiling stock market, which does happen once in a while, one is apt to get a false impression of the ease with which common stocks can be sold. Underpricing for common stocks is one of the most difficult problems in finance. While some witnesses may overemphasize the allowance for underpricing, the general tendency in rate decisions seems to be to underemphasize the necessity for an adequate allowance.

As to dividend policy, it is amazing what some witnesses in rate cases contend is a satisfactory percentage pay-out of earnings. Considering what the investor has to gain in utility stocks—primarily yield with little hopes of appreciation—an investor would be foolish to be happy or satisfied with a very high pay-out such as 90 per cent because of the lack of protection. Some witnesses contend that because some companies have had a high pay-out in the past and investors have bought the stocks, that that proves investors are satisfied with such a pay-out. The chances are they accepted the unsatisfactory protection with the hopes and conviction that the situation will be rectified, rather than because they were satisfied with it.

CAPITALIZATION bears an important part in determining the over-all cost. It is easy to fall in line and accept some rule-of-thumb figure such as 50 per cent debt, 25 per cent preferred, and 25 per cent common and surplus for an electric company. In fact, in the past I have called that a conservative type of capitalization. However, my ideas on this matter are different today. If one attempts to try to prove a low rate of return, the first approach is to try to prove that a high debt ratio is satisfactory. The more I study utility financing the more I am convinced that conservative ratios prove best for both the consumer and investor over the long run. Temporarily, a company may be able to increase its debt without immediately affecting the price at which it can sell stock. Those who attempt to show a low rate of return rely on the temporary effect of a debt increase and overlook the long-run effect it will have on the increase in the cost of equity. A small increase in the cost of equity money will more than offset the temporary advantage of a high debt ratio and this even in spite of the high income taxes today. There are other even more compelling reasons for a conservative capital structure than merely cost alone. They are what I call "borrowing reserve" and "financial insurance against possible unforeseen difficulties." Rate case decisions can be cited which favored a higher debt ratio merely on the basis of higher taxes today, without any comment about those other important principles of finance which must be taken into consideration. It is difficult to see how regulatory authorities who supposedly are trying to protect the consumer can fail to consider the long-run point of view.

A FINAL point in which the investor's attitude seems to be disregarded is the difference in attractiveness of the types of utility companies such as electric, natural gas, manufactured gas, water, telephone, and traction, because of their different characteristics. From the investor's point of view there is a marked distinction between companies in these various fields, as well as companies within each field. This has an important effect on the type of capitalization appropriate for a particular type company and also the over-all cost to attract capital. For example, it would be difficult to figure out a rate of return sufficient to attract new equity capital for many traction companies. And yet in rate decisions there seems to be a tendency to apply remarkably similar rates of return to the different types of utility companies. It was encouraging that Congress at least partially recognized the difference between the electric and telephone business when it approved the exemption from excess profits of 6 per cent for electric and 7 per cent for telephone companies.

When one studies what investors have received in recent years in the utility field in relation to how well the consumer has been treated and in relation to other costs going into utility service, one wonders why companies should encounter trouble in trying to get satisfactory rate increases. A mere glance at basic statistics of the electric industry, brings out the story vividly. Wages and coal costs have gone up like the general price level, but the

share going to the investor has decreased. The cost of utility service has been the bright spot in the inflation picture. Can anyone blame the investors for wondering why some regulatory authorities show a reluctance to increase rates?

WHAT I have said may sound as though I am being critical of regulation. This is not true. Under present conditions, I am thoroughly convinced that the job of regulation is a tough one, and that it takes outstanding statesmanship on the part of regulators to do a fair job. Those words "outstanding statesmanship" deserve underlining. I have a great deal of sympathy for regulators. I think they have an extremely difficult task to perform. They are overworked and have many problems to solve other than just rate of return matters. Furthermore, they are undoubtedly either directly or indirectly subject to political pressure. Since rate increases are unpopular, and since utility consumers are also voters, there is an opportunity for politicians to use the utility companies as "whipping boys."

I think in fairness we should note that the utilities are not entirely blameless for being the "whipping boy." No one will try to defend some of the unfortunate practices in the 1929 era. On the other hand, today the utilities are well managed. They are efficiently operated and provide excellent service. But I am sure that some of their errors in the past are still attached to them in the eyes of the voters. Building better consumer understanding so that there will be less pressure against reasonable rate increases may seem an impossible task. However, I feel very definitely that the industry has a long way to go in getting its story over to the public. I think more of the type of effort spent on efficiency and service should be devoted to a long-range program of public education at the "grass roots." An enlightened public represents the only hope of preventing the unfair or unthinking politician from picking on the utilities.

IN conclusion, investors are obviously not against regulation. They fully recognize its necessity and its benefits. As a matter of fact, from the investor's point of view, too generous regulation would be as harmful over the long run as too strict regulation, because it may mean bad customer relations, a factor which investors must take into consideration. A rate that is fair over the long run is best both for the consumer and the investor.

However, it should be only too obvious that the investor can easily be scared away from utility securities if regulation does not show an appreciation of the practical considerations of the investor discussed above, and the importance of satisfactory earnings protection. The more one works on the problem of rate of return, the more one becomes convinced that not only must the factors discussed above be allowed for, but there is an added allowance which should be included above the bare cost of money in arriving at a fair rate of return—a little extra margin so that the investor is given assurance.

Interesting Employees in the Problems of Management

This author, who has spent years in personnel work on both public and private utility operations and has written volumes on the subject, explains the so-called "McCormick Plan." The key to interesting employees in problems of management, is the foreman or supervisory employee. And the key to his intelligent and sympathetic interest may well lie in an advisory form of participation.

By ALFRED M. COOPER*

THE "new word" in employer-employee relationship is "participation." For more than a decade now the trend has been toward granting the worker a voice in determining matters of company policy that directly bear on his welfare.

In this idea of employee participation in management there is nothing socialistic; it is as democratic as any presidential election. Under this set-up workers do not hold impromptu grievance meetings; indeed, any meetings called for in such a program are scheduled by management, and the subjects to be discussed in such meetings are determined solely by management.

It is of vital importance that management, rather than organized labor or government, institute any participation program, define the exact limitations of its application, and set up satisfactory controls to guard against its abuse or perversion.

Utility management has an unusual incentive for developing a participation plan in that a program of this type, properly administered, serves to set up machinery by which maximum employee co-operation and loyalty may be assured at any time when the future of a utility may depend upon a wholehearted demonstration of such fealty by every employee of that utility.

IN the past there have been two difficulties encountered by organizations that have sponsored participation programs. The first of these has been a tendency to oversimplify matters by substituting committee action for the real thing. The second prob-

*For personal note, see "Pages with the Editors."

lem (that of developing concrete methods of ensuring intelligent cooperation from the individual employee in such a program) has been yet more of a puzzler to those who concede the urgent need for increased employee participation in affairs of management.

The committee idea has met with a degree of success in the form of the McCormick Plan, in which the foremen and office supervisors of an industrial plant sit as a "junior board of directors," discussing and recommending courses of action on matters pertaining to employee welfare.

Less successful, however, were the labor-management committees of World War II, in which representatives of the workers sat down with an equal number of representatives of management and attempted to work out equitable solutions to problems of interest to each faction. The principal drawback to the labor-management committee idea lay in the fact that the labor half of the group represented labor management rather than the individual worker. On the other hand, in the McCormick Plan all recommendations are made by a group of supervisors who may be assumed to consider primarily the interests of management rather than those of the individual worker.

WHENEVER the *desideratum* is genuine employee participation in management, it is essential that the program adopted carry all the way down to the individual employee. Any other setup can only be partially successful, for the same reason that Americans generally would not care to permit their precinct and ward bosses to do their voting for them in a presidential election.

Employee participation is most nearly comparable to the referendum, as this device is utilized in many of our regular statewide elections.

However, experience in our commonwealths, in this matter of referring problems to the voter for decision, has proved that there is much room for improvement in connection with the application of the "referendum" and the "initiative." And this difficulty also may be encountered in the administration of a workable program of participation in management.

IN too many instances, for example, the voter in any general election may be called upon to pass judgment on the worth of twenty or more referendum issues, concerning which he has little or no background of understanding. As a result, it is not uncommon to see a certain measure of this type approved overwhelmingly by the electorate, while the following measure on the ballot (which appropriates the funds to implement the preceding one) is being snowed under by 4 to 1.

Just how we will eventually solve the problem of educating the individual citizen to the issues at stake in any referendum on the ballot at a general election has not yet been determined.

But when it becomes advisable to see to it that the employees of a utility organization are fully informed before being permitted to vote on a managerial matter, the situation is much simplified. In this instance it has been demonstrated that a single training conference will clarify the issues involved in this problem. Thereafter,

Encouraging Employee Interest in Management

"ANY plan that encourages participation in management by informed employees cannot fail to be successful, so long as no effort ever is made to mislead or coerce the employee in reaching decisions in managerial matters. In a very real sense it will be found that a program of this type is a test, not only of the worker's willingness to co-operate, but of management's confidence in the integrity of its own employees."

the individual employee may cast his ballot intelligently. Any ballot-box arrangement for securing employee consensus, which has not been preceded by some such effort to inform the employee fully as to all the pros and cons of the issue to be determined, cannot be successful.

ONE further condition must exist before employee participation in certain affairs of management becomes practicable. This is that management must have confidence in the desire of its employees to co-operate wholeheartedly in such a program. Specifically, management must feel that the employee will vote in the best interest of the company as a whole and not as he has been told to vote by someone not in the employ of the company.

In the past this concern on the part of management might have had some basis in fact. For example, the supposition has been encouraged that the vote of the workingman was rigidly "controlled." It was not until the elections of 1950 that it became crystal clear that we have no "labor vote" in America. Despite enormous pressure, the workingman in these elections voted as his conscience dictated—not as he was told to vote.

Anyone who is well acquainted with the linemen, powerhouse operators, construction crews, shop and clerical groups that go to make up a public utility organization, knows these people to be capable of casting an

honest vote *concerning any question on which they are well informed.*

The best way to ensure that every employee is informed regarding any managerial problem he is to decide is to institute a simple company-wide training program.

The first step in formulating any workable setup of employee participation in management is to drop all references to an imaginary "laboring class."

Management by referendum, in the extent to which it becomes a reality, takes the worker into a genuine partnership, and this is an impossibility where artificial class barriers have been thrown up between management and its employees.

UNDER the Taft-Hartley Law the employer is encouraged to deal as directly as he wishes with his own employees, so long as he acts within the best interests of these employees and the public.

Appreciating this fact, industrial management everywhere has taken steps to narrow the schism that has existed between it and its employees for more than two decades. At the same time the leadership of organized labor has volunteered co-operation with plans designed more closely to cement employer-employee relationships.

The participation program must reach every employee, and each worker must know exactly what he is voting about. It is not sufficient to obtain consensus from committees or groups of foremen.

The need for reaching the individual employee is imperative. This worker is intelligent, and loyal both to his country and to his employer. He is the best educated worker in the world. In the aggregate the opinions of thousands of such men and women on matters of managerial import will be found to be as sound as those of any smaller group of executives.

When management has decided to deal directly with its employees in these matters, it must use care in the selection of the first problems to be submitted to the workers for solution. Thus the employees *must at once become thoroughly sold on the program,* and must altogether cease to view it as "just another one of those things."

As soon as the employee appreciates that management is wholly sincere in this matter he will make every effort to co-operate by voting wisely and intelligently. But in each instance he must, as an individual, be permitted to discuss *in conference* the issues involved before casting his ballot. Only thus can he be certain that he is voting in the best interest of himself, his company, and the public at large. At no time in such a program should employees be asked to discuss partisan political issues or to vote on matters pertaining to a worker's union affiliation.

IN an organization of 10,000 utility employees the training procedure for instituting a participation program was as follows:

1. Whenever management felt it advisable to secure consensus of the employees on a given subject, 150 supervisors were called together. These were the key men in the organization. In this giant "rehearsal meeting" the particular issues involved were discussed until the supervisors

were thoroughly familiar with these matters.

During this meeting all discussion was confined to *facts,* and emphasis was placed on getting the picture over to the employees with complete accuracy and truthfulness. Above all, no effort was made to "propagandize" the workers.

2. At the conclusion of this preliminary meeting the 150 supervisors were furnished with detailed conference plans, mimeographed brochures for issuance to their own subordinates, and a schedule of conferences. (It should be noted that each of these supervisors had been earlier trained as an effective conference leader.)

3. Thereafter, within a period of four days, every employee of the utility participated in one discussion on the subject to be decided. Each supervisor conducted one or more conferences with groups of no more than thirty of his subordinates. At the conclusion of each discussion the employees were well posted on the facts involved in the decision and were prepared to vote intelligently.

4. The yea-and-nay vote of the employees (usually confined to a choice between two or more possible courses of action) was taken at the close of each meeting. This numerical vote was posted on all bulletin boards and also reported to management. Thus the individual employee registered a considered opinion on the problem under consideration, and his aggregate decision demonstrated fairness and wisdom.

5. It is important that the early issues submitted to workers be simple and not too far-reaching in import. But just as soon as the workingmen come to appreciate that the program is altogether on the up-and-up, there is really no limit to what may be safely left to the judgment of 100 or of 50,000 informed employees.

Pension plans, vacation plans for shop employees, bonus arrangements, employee co-operation in ownership election campaigns, and even such vital problems as are involved in essential layoffs and increases or decreases in rates of pay, will be decided equitably by employee consensus.

ANYONE who is sold on the twin theses of constitutional government and free enterprise must also believe in freedom of the ballot. Such balloting, *once the worker knows what he is voting about,* will be trusted by anyone who honestly subscribes to our democratic way of life.

Specific problems affecting worker welfare will be recognized by management as these arise. Ordinarily such problems develop but two or three times yearly. Thus, plant-wide conferences need be conducted but infrequently.

6. When a utility organization has its back to the wall in a desperate ownership fight, it is altogether fitting and proper to request the employees, at the conclusion of any such meeting, to go out and tell their friends and neighbors the *facts* regarding this controversy. Thus management, by conceding the employee participation in affairs of management, has at the same time fashioned an instrument of administrative control of incalculable value.

If, in the years ahead, the choice should narrow down to some such

plan as here outlined, or, on the other hand, perpetuation and increase of labor strife, the time and energy devoted to such a plan will have been wisely expended.

ANY plan that encourages participation in management by informed employees cannot fail to be successful, so long as no effort ever is made to mislead or coerce the employee in reaching decisions in managerial matters. In a very real sense it will be found that a program of this type is a test, not only of the worker's willingness to co-operate, but of management's confidence in the integrity of its own employees.

What Do the People Want?

"DO *the people want socialized electricity?*

"A great many politicians claim they do—or, at least, that they will accept it willingly. But the available factual evidence presents quite a different picture.

"The Pacific Northwest is a good example. It contains some of the government's largest power dams. The tax-paid Washington propaganda boys have beaten the drums for so-called public power for years. Everything possible has been done to make the voters believe that only government can assure them an adequate electric supply at a low cost.

"Between 1946 and 1950, inclusive, in Oregon, the citizens of 17 towns and areas voted on proposals for municipal electric plants, or for the creation of public utility districts which would supplant the private utilities. In 15 cases the proposals were voted down, often by heavy majorities. In only two were they approved.

"This year two such proposals have been voted on in the state of Washington. Both were decisively defeated.

"It's hard to see how anyone could argue that these votes do not represent public opinion. Both sides presented their cases in full, and in every instance public interest was high. The voters simply weighed the proposals on their merits—and marked their ballots accordingly.

"In the case of the Federal socialized power systems, the people have no direct voice—it's a case where Socialism is forced down our throats whether we like it or not. But when the people can speak out, at the ballot box, Socialism almost always gets the axe."

—EXCERPT *from Industrial News Review.*

Exchange Calls And Gossip

NARUC Convention

THE telephone industry got some interesting news at the recent convention of the National Association of Railroad and Utilities Commissioners in Charleston, South Carolina. Commissioner Paul A. Walker, vice chairman of the Federal Communications Commission, told the delegates that there was a basis for agreement reached among the FCC, the NARUC, and the Bell system on the troublesome question of disparity of interstate *versus* intrastate toll rates.

Ever since the FCC in January, 1951, instituted proceedings against the Bell system to inquire into the possibility of excess earnings in the Long Lines (long distance) Department of the Bell system, there had been a series of events, all pointing toward some kind of a solution of the problem on a new separations agreement with the state utility commissions.

Senator McFarland (Democrat, Arizona), who has long concerned himself with the activities of the FCC, the NARUC, and the state commissions themselves, took the position that if some of the rate base expense of the intrastate operations could be shifted to the more lucrative operations of the Long Lines Department of Bell, the state commission could be spared the necessity of considering third- and fourth-round rate increase requests for intrastate operations. This would entail a series of discussions between NARUC and FCC officials to review the entire separations question. These meetings began early this year. In the meantime, the proceedings in Docket 9889, the Bell Case, were postponed and the respective groups continued their deliberations.

IN addition to the activities of the NARUC committee and its discussions with the FCC, representatives of the FCC have been reviewing with representatives of the Bell system, the existing separations procedures, particularly those affecting the allocation of exchange plant investment and expenses, in order to determine whether changes in the procedures are necessary or desirable before further consideration of the case.

At the NARUC meeting, Commissioner Walker had this to say about these discussions:

> . . . As a result, we have developed certain modifications of the separations procedures applicable to the exchange component, which we are willing to propose and accept on an interim basis. I say "interim basis" because, as you know, the FCC has not, as yet, formally prescribed separations procedures. The FCC believes that these proposed modifications represent reasonable separations procedures, and that they will produce results which are fair and equitable to both state and Federal jurisdictions.

Apparently the plan evolved quickly before the convention. Talks on the matter had been going on for most of the summer but there was no immediate hope that the conclusions would be ready in time for the NARUC convention. In fact, according to Walker, discussions on the subject went on during the convention right up to the time of Walker's address. Walker also announced that the Bell people had seen the recommendations and that Bell was willing to go along with the recommendations if FCC and NARUC could agree.

Commissioner Walker outlined the plan as follows:

> . . . It will have the effect of shifting from state to interstate operations approximately $82,000,000 of exchange plant gross investment and $17,000,000 of related annual expenses. This is in addition to the transfer to interstate of over $1,000,000 gross plant investment and almost $4,000,000 of annual expenses, which will result from the previously mentioned simplification changes worked out by the separations subcommittee last May.

Commissioner Walker mentioned a Bell system revision made earlier this year with respect to the development of toll coefficients related to the allocation of operator work time between state and interstate services. This change is estimated as shifting about $20,000,000 of gross plant investment and $15,000,000 of annual expenses. He summarized by pointing out that, in effect, since the last meeting of NARUC in Phoenix (at which time this entire separations question was the subject of some controversial discussion), changes in the separations procedures, or in the methods of applying them, have resulted or will result in a transfer of about $110,000,000 of gross plant and about $37,000,000 of annual expenses to interstate operations.

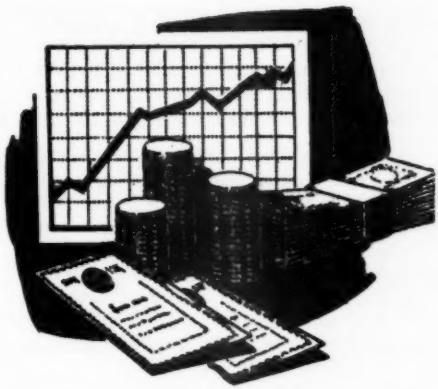
USITA Meeting

THE retiring president of the United States Independent Telephone Association, Ray Dalton, told its convention meeting in Chicago recently that the telephone industry must plan for another four or five years of continued military expansion and civilian subordination to military needs. Since the industry must plan its future operations, Dalton thought that the most likely basis would be an assumption that artificial restrictions of war will continue to be superimposed upon increasing demands by the civilian population for telephone service, due to high employment and mass spending. The telephone executive also foresaw, in the years ahead, an era of "social and business dispersal," slowing down the growth of big cities but rapidly increasing smaller communities. This would increase the complexity of the problem of serving the populace for the telephone industry. Dalton contrasted the effect of inflationary material prices with a rapidly growing telephone ratemaking concept that a 6 per cent return was sufficient for telephone companies in even the best of times.

In an address entitled "It's Time We Saved Ourselves," Governor Johnston Murray of Oklahoma scored the steady encroachment of the Federal government in the field of private enterprise. He pointed out that he had vetoed a bill in Oklahoma known as the "Rural Telephone Act" because it seemed to be an effort to strengthen the theory of strong centralization and special privileges instead of an advocation of the sovereign rights of the state. He declared that he believed the act to be one, the purpose of which was to broaden the gate through which the Federal government might invade a private utility.

L. W. HILL, president, Carolina Telephone & Telegraph Company, Tarboro, North Carolina, and until recently director of the communications equipment division of the National Production Authority, told the convention audience of the objectives of the defense program and their stages of accomplishment. On the first, continuity of the military production program, Hill reported few programs behind schedule. He pointed out that the second objective—namely, that of maintaining a healthy civilian economy—seemed to be successfully evident. On industrial expansion, the third, he noted that 8,000,000 of an additional 18,000,000 tons of steel production already was in sight. On the fourth, the equitable distribution of available materials, a corollary of maintaining high civilian production, Hill reported that he believed the Controlled Materials Plan met the standards of fairness.

Financial News and Comment



By OWEN ELY

Review of Holding Company Dissolution Progress

FOLLOWING are some of the more important developments with respect to holding companies since our last general review:

American & Foreign Power and its parent company, Electric Bond and Share, on August 3rd reached a compromise agreement with the various committees representing the first preferred and second preferred stockholders, regarding certain amendments to the reorganization plan which had been filed with the SEC January 16, 1951. This included the following changes:

(1) The interest rate on the $67,500,000 new debentures was raised from 4.5 per cent to 4.8 per cent, presumably because of the general advance in interest rates. There was no change in the allotment of debentures—$90 to each $7 first preferred share and $80 to the $6.

(2) Each share of the $7 first preferred would receive 3.75 shares of common stock instead of 3.6 shares, and the $6 preferred would get 3 shares instead of 2.9 shares.

(3) A more important change was the increase in the amount of common allotted to each publicly held share of the second preferred stock, from 65/100 share to 85/100 share. Possibly to offset this change, Electric Bond and Share's participation in the total issue of new common stock was reduced from 56.5 per cent to 55.7 per cent.

THE effect of this broad agreement will probably be to save several months' time in SEC procedure. Hearings already had been pretty well completed but the agreement avoided the necessity of filing briefs, etc. An SEC decision may be forthcoming some time this fall, with approval by the Federal court following within a few weeks, assuming that no complications arise. Assuming a market valuation of 85 for the new debentures (the present 5s of 2030, senior to the new debentures, are currently selling around 95), and 14 for the new common stock, break-up value for the $7 preferred would be 130, and for the $6, 110. The second preferred value works out at around $12 a share, and the common stock would be worth about 28 cents based on its proposed participa-

DEPARTMENT INDEX

tion (unchanged) of 1/50 of a share of new common. The prices for the new securities assume considerable market seasoning—initial prices would doubtless be lower, with possible arbitraging.

AMERICAN POWER & LIGHT is heavily involved in the political crosscurrents of the Northwest. President Aller seems confident that he can overcome legal obstructions and consummate the proposed sale of the company's principal asset, Washington Water Power, to PUD's for some $61,000,000. He has been granted a delay until January 1, 1952, by the SEC, but if sale is not effected by then, he must distribute the Washington stock to his own stockholders. American also has about $4 a share in cash and miscellaneous assets, and the SEC has granted permission to distribute half of this amount immediately. Stockholders now seem to face three alternatives: If President Aller is successful in obtaining his price objective, the stock might have a break-up value of around 27-30 compared with the recent market price around 23. However, if no sale is consummated, current break-up value might be estimated around 19-20, even on a liberal appraisal of Washington Water Power's current earnings. In the twelve months ended June 30th, these earnings were $1.16 a share, which would be equivalent to about $1.26 per share of American. Hence American's current price of 23, minus $4 in miscellaneous assets, would reflect a price-earnings ratio for Washington of about 15. While Washington has a high equity ratio (over 60 per cent) and has a plan under way to double its hydro capacity and potential earning power in perhaps two to three years, a current price-earnings ratio of 15 seems a little high as compared with less than 9 for its neighbor, Pacific Power & Light.

It is quite possible, however, that if a stockholder of American receives the Washington stock and retains it for two or three years, he might obtain substantial appreciation. The new Cabinet Gorge hydro plant can probably be financed largely or wholly through debt, which would give leverage benefits to the common stocks; and there are also several other ways in which earnings might be improved, such as refunding the $6 preferred stock, ending the annual charge-off of Account 100.5 (equivalent to about 9 cents a share) by a charge to surplus, etc. On the other hand, interim earnings may fluctuate somewhat due to weather effects on hydro operations—adverse this year until recently.

ELECTRIC BOND AND SHARE has not as yet received any decision from the SEC as to whether it can retain United Gas Corporation stock or whether it should sell or distribute this holding. EB&S has, however, benefited marketwise by the progress effected with the American & Foreign Power plan. An important market factor also is the publicity given to the tax-free cash dividends which the company may be able to pay in future, due to its large book losses on Foreign Power security holdings (which will not be affected by the reorganization of Foreign Power). While as a practical matter it seems improbable that such losses could be realized in such fashion as to spread the dividend benefits over a period of twenty to thirty years, nevertheless the amount of the loss (at current market levels) supports such a statistical conclusion.

Similar book losses are apparently an important market consideration with the stock of United Corporation, which is selling above its net asset value and yielding only about 4.35 per cent. United also could (theoretically) pay tax-free dividends for thirty years. The term "tax free" may be somewhat misleading: It means merely that the dividends are considered a return of capital and that the holder's cost per share must be written down on his tax books each year by the amount of the dividend—so that eventually his stock may be marked down to zero, in which case it is understood that dividends would be considered long-term gains and would be taxable as such.

INTERNATIONAL HYDRO - ELECTRIC. There have been no special develop-

PRINCIPAL PUBLIC OFFERINGS OF UTILITY SECURITIES

June 14, 1951, to October 20, 1951

Date	Amount Mill.	Description	Price To Public	Gross Spread (Points)	Offering Yield*	Moody Rating
		Mortgage Bonds				
6/20	$11.5	Texas El. Serv. 1st 3⅜s 1981	100.85	.53	3.33%	Aa
6/20	25.0	Peoples Gas (Chic.) 1st & Ref. 3⅜s 1981	100.82	.68	3.58	A
6/20	4.0	Missouri Pr. & Lt. 1st 3⅜s 1981	101.13	.92	3.56	A
6/21	5.4	Gas Service 1st 3⅜s 1971	102.49	.83	3.58	A
6/28	25.0	Cleve. Elec. Ill. 1st 3⅜s 1986	102.39	.76	3.26	Aaa
6/28	17.0	Appalachian El. Pr. 1st 3⅜s 1981	102.25	.88	3.63	A
6/28	3.0	Mont.-Dakota Utils. 1st 4½s 1952-71	—	—	3–4.25	Baa
7/11	5.0	Iowa Pub. Serv. 1st 3⅜s 1981	100.37	.82	3.48	A
7/12	10.0	Minnesota P. & L. 1st 3⅜s 1981	101.75	.73	3.53	A
7/18	9.0	Washington Gas Lt. Ref. 3⅜s 1976	100.67	.47	3.46	A
7/25	4.0	Mississippi Pr. 1st 3⅜s 1981	100.93	.84	3.45	A
7/26	50.0	United Gas Corp. 1st & Collat. 3⅜s 1971	102.37	.71	3.46	A
8/8	15.0	Michigan Cons. Gas 1st 3⅜s 1976	102.00	.89	3.38	A
8/29	30.0	So. Cal. Ed. 1st & Ref. 3⅜s 1976	102.00	.70	3.01	Aa
9/7	12.0	Col. & So. Ohio El. 1st 3⅜s 1981	102.42	.79	3.13	A
9/13	45.0	Tenn. Gas Trans. 1st 3⅜s 1971	100.72	.41	3.45	Baa
9/13	15.0	Alabama Pr. 1st 3⅜s 1981	101.93	.65	3.15	A
9/27	12.0	Southern Counties Gas 1st 3⅜s 1981	101.87	.81	3.40	A
10/3	15.0	Pub. Serv. of Colo. 1st 3⅜s 1981	101.93	.29	3.15	Aa
10/4	15.0	Idaho Pr. 1st 3⅜s 1981	101.50	.64	3.17	Aa
10/9	10.0	Assoc. Tel. 1st 3⅜s 1981	102.31	1.22	3.50	A
10/11	8.0	Arkansas Pr. & Lt. 1st 3⅜s 1981	103.25	1.01	3.45	A
10/11	5.0	Penn. Elec. 1st 3⅜s 1981	101.63	.54	3.29	A
10/19	6.1	New Eng. G. & E. Coll. 4s 1971	101.00	.87	3.91	Baa
		Debentures				
6/20	$ 2.7	Northern Penn. Gas Deb. 5s 1971	103.20	3.00	4.76%	Baa
		Preferred Stocks				
6/13	$ .5	Southeastern P. S. 6% Conv. Pref.	27.00	2.00	5.55%	—
7/3	7.0	Assoc. Tel. Ltd. 5% Pfd.	20.00	—	5.00	—
7/17	2.2	Scranton Elec. 4.40% Pfd.	102.25	2.25	4.30	—
7/24	10.0	Texas Gas Trans. 5.40% Pfd.	100.00	3.65	5.40	—
7/25	7.2	El Paso Nat. Gas $4.40 Conv. 2nd Pfd.	101.00	3.00	4.36	—
10/11	3.0	Penn. Elec. 4.70% Pfd.	103.25	3.15	4.57	—
		Common Stocks—Subscription Rights				
6/15	$ 9.2	American Natural Gas	27.50	—	5.82%	—
6/15	8.3	General Public Util.	16.50	—	7.27	—
6/27	2.3	United Utilities	11.75	—	8.51	—
6/29	18.5	United Gas Corp.	17.50	—	5.71	—
7/18	5.5	N. Y. State Electric & Gas	25.25	.38	6.73	—
7/26	2.8	Montana-Dakota Utilities	17.00	.40	5.30	—
7/26	7.7	Pacific P. & L.	14.25	—	7.72	—
8/1	5.5	Rochester G. & E.	31.50	.49	7.11	—
9/19	13.0	Penn. Power & Light	24.00	—	6.66	—
		Common Stocks—Other New Money Sales				
7/18	$ 8.4	General Telephone	28.13	1.55	7.10%	—
9/20	5.0	Utah Power & Light	28.50	.96	6.31	—
9/27	10.1	Natural Gas & Oil	11.25	1.25	—	—
10/17	7.6	Central & South West	15.18	.34	5.93	—
10/18	4.4	Louisville Gas & Electric	33.50	—	5.36	—

*Yield to maturity on bonds.

ments since this company was last discussed. Stockholders are still awaiting definite progress reports with respect to potential developments which have been discussed from time to time: (1) sale of some of the New York hydro properties to Niagara Mohawk Power, which would provide cash to pay off the bank loan; (2) retirement of the preferred stock through an exchange for about six shares of Gatineau; and (3) obtaining SEC permission to keep the company alive on an all-common stock basis, thereby taking advantage of substantial tax losses on the books to declare tax-free dividends.

STANDARD GAS & ELECTRIC's plan, filed with the SEC early in February, is still in process of consideration by the staff. The plan did not provide for a complete allocation of securities but merely suggested terms for retiring the $7 and $6 prior preference stocks, with their claims (excluding redemption premiums) of approximately $203 and $188, respectively. The company proposed to retire each share of prior preference stock with the following packages of securities:

	No. Shares Common Stock of		
	Wisconsin	*Oklahoma*	*Duquesne*
$7 Prior Pref.	4.3	2.9	2.1
$6 " "	4.0	2.6	1.7

Oklahoma Gas & Electric has been selling recently around 21. Wisconsin Public Service is wholly owned by Standard Gas, and Duquesne at present is wholly owned by Philadelphia Company. (Standard would receive about 1,000,000 shares of Duquesne from Philadelphia in a preliminary distribution—slightly more than needed for these exchanges.) Wisconsin is earning $1.62 per share on its common stock and is paying $1.10; its value may be estimated at about 16-18.

Duquesne Light is currently earning about $1.90 on the 5,750,000 shares which will be outstanding when the Standard Gas plan becomes effective. While income taxes (including a substantial EPT) for this period were about 2½ times as large as in the previous period, they may still be somewhat smaller than if the company were on an independent basis. On the other hand, the figures for the twelve months ended June include only a little over one-third of the annual amount of the rate increase which became effective early in February (about $8,000,000).

ON a *"pro forma"* basis, Duquesne earnings might be stepped up to around $2.15, assuming that the rate increase is permitted to stand by the Pennsylvania state commission, which has rendered no final decision as yet. Considering increasing tax rates and other adjustments, "normal" future earnings might be estimated at about $2. It has been indicated officially that a dividend rate of $1.50 may be initiated after the plan goes into effect. On this basis and considering the fact that the stock would probably be tax free in Pennsylvania, the future price (when the stock goes into the hands of the public) may be estimated in the range of 22-27, the higher figure reflecting market seasoning.

Using these prices in the packages allocated under the plan, the value of the Standard Gas & Electric $7 prior preference stock may be estimated at $176-$194, and for the $6 stock $155-$171.

Standard Gas some weeks ago announced a complete agreement with its inactive parent company, Standard Power & Light, on adjustment of certain relations between the two companies. The agreement provides for delivery by Standard Gas to Standard Power of 31,000 shares of Duquesne Light Company new common stock, and cancellation of the note for slightly less than $1,000,000 held by the parent company, as well as a release of all claims or counterclaims between the two companies.

Data Books

IT is becoming the custom for utility companies to prepare "data books" for distribution to utility analysts, at meetings before the New York Society of Security Analysts, at underwriters' meetings in connection with new issues,

ALL INDUSTRIAL ELECTRICITY IN THE UNITED STATES
SALES BY PUBLIC UTILITIES PLUS GENERATION BY INDUSTRIAL PLANTS
BILLIONS OF KILOWATTHOURS PER MONTH
GRAND TOTAL
CIVILIAN USE
START OF KOREAN WAR
TOTAL FOR WAR
V J DAY
TOTAL FOR WAR
WAR USE
PEARL HARBOR
CIVILIAN USE
1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951
EDISON ELECTRIC INSTITUTE

for use in inspection trips, etc. A recent example was that of Western Massachusetts Companies, the book being used as a guide by President Cadwell in his recent talk before the analysts. It was arranged under six tabs as follows:

A. Corporate Data
B. Statements
C. Economic Data
D. Physical Data
E. Service Area
F. Annual Report

The table of contents also contained a brief table of pertinent items such as the number of shares, recent earnings, dividend, and price; the number of system customers and number of cities served, the cost of plant, the annual revenues, etc.

The interim earnings statement was inserted in a plastic sleeve so that new figures could easily be inserted when received. The company plans to revise and reissue the book annually.

A table of comparative statistics under "Economic Data" showed various balance sheet and income account ratios for the company in 1949-50, as compared with the national averages for class A and B electric utilities in 1949. In connection with its rate statistics, the company listed "significant cost factors" such as fuel cost per million BTU's, and state and local taxes per thousand dollars of plant investment (showing comparative figures for New England and the U. S.). The amount of annual rate reductions during the period 1927-50 was shown. In connection with the residential sales, appliances saturation for the company was shown for four items, compared with New England and the U. S.

The company's "Hydro Equalization Reserve" is an interesting feature, perhaps unique among the hydro companies. It was set up in order to stabilize earnings, as follows: From records covering a long period of years, averages of hydro output were established, and a formula was developed for evaluating monthly variations from the long-term averages. The sum of $400,000 was taken from surplus to establish a reserve, which now increases during times of good rainfall and is drawn upon to supplement earnings during drought periods.

Accelerated Amortization

ON June 13th, a DPA official reported that his agency had approved its first batch of accelerated amortization certificates providing tax benefits for electric utilities. A month later the Defense Electric Power Administration reported that 57 electric utility projects had been granted tax amortization certificates. The construction projects would provide an estimated production capacity of 3,470,000 kilowatts, and the estimated cost eligible for tax relief was $568,000,000. The weighted average percentage approved was 45.5. Some 239 applications had been received totaling $1,644,000,000, of which about one-third had been granted and some $84,000,000 denied.

Only a few applications have been approved since July 13th, amounting to an estimated $15,000,000 or more. A 60-day "moratorium" on granting any applications expired October 18th.

Many of the 63 items approved to date reflect "repeat" certificates to the same company. Some are subsidiaries of holding companies. Two items are for an industrial company. Thus, about fourteen utility *systems*, as such, have received certificates. (Data for three of these are inadequate.) Here is a partial list arranged in the approximate order of size:

American Gas & Electric	$201.9
Detroit Edison	121.1
Southern Company	104.6
Virginia Electric & Power	51.6
Pacific Power & Light	26.2
Cleveland Electric Illuminating Co.	25.0
West Penn Electric	12.1
Ohio Edison	13.1
Potomac Electric Power	9.5
Southwestern Public Service	4.9
Central Vermont Public Service	2.0
Miscellaneous	12.5
Total	$584.5

THE amounts given above are the "eligible" amounts, which in almost all cases are practically the same as the

amounts applied for. The percentages of these amounts which have been "certified" range from 25 to 75 per cent for different items and for different subsidiaries. The percentages vary with the year in which the plant will be completed, etc.

Utility analysts are principally interested in the probable future effects on reported share earnings of accelerated amortization and resulting tax savings.

CURRENT UTILITY STATISTICS AND RATIOS

	Unit Cost	Latest Month	Latest 12 Mos.	Per Cent Increase Latest Month	Per Cent Increase Latest 12 Mos.
Operating Statistics (August)					
Output KWH—Total	Bill. KWH	32.3	358.9	12%	15%
Hydro-generated	"	7.8	—	4	—
Steam-generated	"	24.5	—	14	—
Capacity	Mill. KW	73.6	—	11	—
Peak Load (July)	"	60.5	—	12	—
Fuel Use: Coal	Mill. tons	8.9	—	10	—
Gas	Mill. MCF	87.7	—	30	—
Oil	Mill. bbls.	5.0	—	D17	—
Coal Stocks	Mill. tons	37.4	—	36	—
Customers, Sales, Revenues, and Plant (July)					
KWH Sales—Residential	Bill. KWH	4.2	53	13%	14%
Commercial	"	3.8	42	10	10
Industrial	"	10.8	129	13	21
Total, Incl. Misc.	"	24.9	301	9	14
Customers—Residential	Mill.	29.4	—	5	—
Commercial	"	4.3	—	1	—
Industrial	"	.6	—	3	—
Total	"	36.4	—	4	—
Income Account—Summary (July)					
Revenues—Residential	Mill. $	127	1,569	11%	11%
Commercial	"	100	1,163	8	8
Industrial	"	121	1,433	12	16
Total, Inc. Misc. Sales	"	387	4,601	10	11
Sales to Other Utilities	"	30	386	D1	5
Misc. Income	"	10	202	11	2
Expenditures					
Fuel	"	69	817	16%	14%
Labor	"	86	976	13	10
Misc. Expenses	"	62	782	2	3
Depreciation	"	39	459	10	11
Taxes	"	88	1,061	18	26
Interest	"	23	270	8	7
Amortization, etc.	"	2	22	47	D2
Net Income	"	57	801	D7	D2
Preferred Div. (Est.)	"	10	114	9	9
Bal. for Common Stock (Est.)	"	47	687	D8	D2
Common Dividends (Est.)	"	43	516	8	9
Balance to Surplus (Est.)	"	4	171	D50	D8
Electric Utility Plant (July)	"	$19,855	—	10%	—
Reserve for Deprec. and Amort.	"	4,078	—	8	—
Net Electric Utility Plant	"	15,777	—	10	—
Life Insurance Investments (January 1st-October 6th)					
Utility Bonds	"	—	541	—	D47%
Utility Stocks	"	—	37	—	D76
Total	"	—	578	—	D50
% of All Investments	"	—	7%	—	D63

D—Decrease.

RECENT FINANCIAL DATA ON GAS COMPANY STOCKS

		10/18/51 Price About	Indicated Dividend Rate	Approx. Yield	Share Earnings# Cur. Period	Prev. Period	% Increase	Price-Earnings Ratio	Div. Payout
Producers and Pipeline Companies									
O	Commonwealth Gas	12	$ .15	1.3%	$ .74d	$ .62	19%	16.2	20
S	Mississippi Riv. Fuel	34	2.00	5.9	3.26je	2.58	26	10.4	61
O	Missouri-Kans. P. L.	59	1.60	2.7	1.66d	4.32	D62	—	96
S	Southern Nat. Gas	50	2.50	5.0	3.87je	3.44	13	12.9	65
O	Southwest Nat. Gas	7	.20	2.9	.35je	.29	21	—	57
O	Tenn. Gas Trans.	25	1.40	5.6	1.84je	1.24	48	13.6	76
O	Texas East. Trans.	18	1.00	5.6	1.93d	1.49	30	9.3	52
O	Texas Gas Trans.	17	—	—	1.95d	.81	141	8.7	—
	Averages			4.1%				11.9	
Integrated Companies									
S	American Natural Gas	34	$1.80	5.3%	$2.66je	$1.98	34%	12.8	60
S	Columbia Gas System	16	.90	5.6	1.30je	1.11	17	12.3	62
S	Consol. Nat. Gas	57	2.50	4.4	5.65je	4.71	20	10.1	40
S	El Paso Nat. Gas	35	1.60	4.6	3.08ju	1.40	120	11.4	52
S	Equitable Gas	21	1.30	6.2	1.84je	2.21	D17	11.4	71
O	Interstate Nat. Gas	38	2.50	6.6	3.25d	2.50	30	11.7	77
O	Kansas-Neb. Nat. Gas	22	1.12	5.1	1.95d	1.63	20	11.3	56
C	Lone Star Gas	27	1.40	5.2	1.89je	2.05	D8	14.3	74
S	Montana-Dakota Utils.	25	.90	3.6	1.06je	1.20	D12	—	85
O	Mountain Fuel Supply	18	.70	3.9	.99d	.91	9	18.2	61
C	National Fuel Gas	15	.80	5.3	1.28je	1.22	5	11.7	63
O	National Gas & Oil	8	.40	5.0	1.04d	.62	68	7.7	38
S	Northern Nat. Gas	39	1.80	4.6	1.86je	2.27	D18	21.0	97
C	Oklahoma Nat. Gas	34	2.00	5.9	3.01ju	2.96	2	11.3	66
C	Pacific Pub. Serv.	15	1.00	6.7	2.23d	2.08	7	6.7	45
S	Panhandle East. P. L.	60	2.00	3.3	2.86je	2.58	11	21.0	70
S	Peoples Gas Lt. & Coke	128	6.00	4.7	8.58je	9.51	D10	14.9	70
O	Southern Union Gas	23	.80	3.5	1.51d	1.34	13	15.2	53
S	United Gas	24	1.00	4.2	1.61je	1.51	6	14.9	62
	Averages			4.9%				13.2	
Retail Distributors									
O	Atlanta Gas Light	22	$1.20	5.5%	$2.00je	$2.23	D10%	11.0	60
C	Bridgeport Gas	23	1.40	6.1	1.47d	1.88	D22	15.6	95
O	Brockton Gas Lt.	23	1.40	6.1	1.44d	1.48	D3	16.0	97
S	Brooklyn Union Gas	45	3.00	6.7	3.99je	4.34	D8	11.3	75
O	Central El. & Gas	10	.80	8.0	1.05je	1.03	2	9.5	76
C	Consol. Gas Util.	12	.75	6.3	1.56ju	1.48	5	7.7	48
O	Hartford Gas	36	2.00	5.6	2.68d	2.67	—	13.4	75
O	Haverhill Gas Lt.	34	1.80	5.3	1.98ag	2.06	D4	17.2	91
O	Houston Nat. Gas	18	.80	4.4	1.06ju	1.45	D27	17.0	75
O	Indiana Gas & Water	24	1.40	5.8	2.17ag	2.15	1	11.1	65
O	Jacksonville Gas	34	1.40	4.1	4.97d	4.77	4	6.8	28
C	Kings County Ltg.	8	.40	5.0	.45d	.64	D30	17.8	89
S	Laclede Gas	8	.50	6.2	.88ag	.80	10	9.1	57
O	Michigan Gas Utils.	13	—	—	1.12je	.76	47	11.6	—
O	Minneapolis Gas	20	1.05	5.3	1.39je	1.08	29	14.4	76
O	Mobile Gas Service	30	1.60	5.3	3.04je	3.03	—	9.9	53
O	New Haven Gas Lt.	26	1.60	6.2	1.92d	1.70	13	13.5	83
S	Pacific Lighting	52	3.00	5.8	4.04je	3.29	23	12.9	74
O	Providence Gas	9	.50	5.6	.57d	.56	2	15.8	88
C	Rio Grande Valley Gas	2	.12	6.0	.20je	.18	10	10.0	60
O	Rockland Gas	36	1.70	4.7	4.63d	4.41	5	7.8	37
O	Seattle Gas	16	.60	3.8	1.45je	1.37	6	11.0	41
S	United Gas Improv.	28	1.40	5.0	2.29jePF	NC	—	12.2	61
S	Wash. Gas Light	26	1.50	5.8	2.69je	2.22	21	9.7	56
	Averages			5.6%				12.2	

RECENT FINANCIAL DATA ON TELEPHONE, TRANSIT, AND WATER COMPANIES

		10/18/51 Price About	Indicated Dividend Rate	Approx. Yield	Share Earnings# Cur. Period	Prev. Period	% Increase	Price-Earnings Ratio	Div. Payout
Communications Companies									
Bell System									
S	Amer. Tel. & Tel.	159	$9.00	5.7%	$12.67*ag	$11.98*	6%	12.5	71
O	Cinn. & Sub. Bell Tel.	75	4.50	6.0	4.59d	4.79	D4	16.3	98
C	Mountain Sts. T. & T.	103	6.00	5.8	6.48s	7.01	D8	15.9	93
C	New England Tel.	110	8.00	7.3	11.26je	10.01	12	9.8	71
S	Pacific Tel. & Tel.	114	7.00	6.1	9.06my	6.42	41	12.6	77
O	So. New Eng. Tel.	33	1.80	5.5	2.12d	1.79	18	15.6	85
	Averages			6.1%				13.8	
Independents									
O	Central Telephone	11	$ .80	7.3%	$1.33ag	$1.20	11%	8.3	60
S	General Telephone	31	2.00	6.5	2.45ag	1.41	74	12.7	82
C	Peninsular Tel.	40	2.50	6.3	3.78je	4.14	D9	10.6	66
O	Rochester Tel.	13	.80	6.2	1.52d	.90	69	8.6	53
Transit Companies									
O	Chicago SS. & S. B.	11	$1.00	9.1%	$1.67d	$ .91	84%	6.6	60
O	Chicago No. Sh. & Mlke.	6	—	—	.46d	NC	—	9.8	—
O	Cinn. St. Ry.	4	.30	7.5	.19d	.84	D77	—	158
O	Dallas Ry. & Term.	13	1.40	10.8	1.76d	1.39	27	7.4	80
S	Greyhound Corp.	11	1.00	9.1	1.23je	1.14	8	8.9	81
O	Kansas City P. S.	2	—	—	—	—	—	—	—
O	Los Angeles Transit	5	.50	10.0	.51d	.84	D39	9.8	98
S	Nat. City Lines	10	1.00	10.0	1.90d	1.75	9	5.3	53
O	Rochester Transit	5	—	—	.13d	NC	—	—	—
O	St. Louis P. S. A	8	.50	6.3	.41d	.48	D15	—	122
O	Syracuse Transit	27	2.00	7.4	2.89d	.62	366	9.3	69
O	United Transit	3	—	—	.68d	.55	24	4.4	—
	Averages			8.8%				7.7	
Water Companies									
Holding Companies									
S	Amer. Water Works	9	$ .50	5.6%	$1.09je	$ .81	35%	8.3	46
O	N. Y. Water Service	25	.80	3.2	2.17je	1.33	63	11.5	37
Operating Companies									
O	Bridgeport Hydraulic	30	$1.60	5.3%	$1.45d	$1.57	D8%	20.7	110
O	Calif. Water Serv.	27	2.00	7.4	2.26ag	2.48	D9	11.9	88
O	Elizabethtown Water	100	6.00	6.0	6.96d	8.37	D17	14.4	86
S	Hackensack Water	32	1.70	5.3	2.73d	2.68	2	11.7	62
O	Jamaica Water Supply	23	1.50	6.5	2.20je	1.72	28	10.5	68
O	New Haven Water	55	3.00	5.5	3.25d	3.45	D6	16.9	92
O	Ohio Water Service	22	1.50	6.8	2.07je	1.66	25	10.6	72
O	Phila. & Sub. Water	32	.80	2.5	3.06d	3.49	D12	10.5	26
O	Plainfield Union Wt.	48	3.00	6.3	4.16d	5.09	D18	11.5	72
O	San Jose Water	32	2.00	6.3	2.53ag	2.93	D14	12.6	79
O	Scranton-Spring Brook	14	.90	6.4	1.00je	1.08	D7	14.0	90
O	Southern Cal. Water	8	.65	8.1	.83m	.77	8	9.6	78
O	Stamford Water	52	2.00	3.8	2.10d	2.35	D11	24.8	95
O	West Va. Wt. Service	21	1.20	5.7	1.31d	1.29	2	16.0	92
	Averages			5.9%				14.0	

D—Deficit. C—Curb exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. *Based on average number of shares outstanding. #In order to facilitate comparisons, earnings are calculated on present number of shares outstanding, except as otherwise indicated. PF—*Pro forma.* d—December, 1950. m—March. my—May. je—June. ju—July. ag—August. s—September. NC—Not comparable.

What Others Think

Hulcy Cites Free Enterprise Threat

THE American way of life and the political and economic institutions on which it is based are in real and immediate danger, the retiring president of the American Gas Association told its convention in St. Louis recently.

D. A. Hulcy, president of AGA for the past year, also president of the Chamber of Commerce of the United States, declared that we are aware of the danger from the armed forces of Communism and we face that danger with confidence. We are putting ourselves in a position of impregnable defense against it.

"Our free competitive society has never known defeat by any foreign power," Mr. Hulcy said. "It packs the mightiest military punch in all the time of man. It has crumpled the arrogant aggressions of kings, emperors, and dictators. As a free people we have licked all kinds of unfree people.

"Nobody knows this better than Joe Stalin for he saw with his own eyes how the immense flow of arms, munitions, and other military equipment from the mass production plants of free America made it possible to drive the Germans from Russian soil. And as long as we remain a free people we can face any menace from a foreign enemy with confidence and justified assurance."

The gas industry executive warned:

> But the dangers that menace our way of life and the political and economic institutions on which it is based are not only from foreign enemies. The more immediate dangers are here at home, among our own people, and these dangers are not to be met by our capacity to produce weapons of defense for the battlefield.

He continued:

> We must use quite other weapons against the dangers that menace our free institutions at home. And it would be a tragic fate for the American people if, while concentrating their attention on the menace of the Communist power from abroad and expending their energies in building an impregnable defense against that power, they should wake up too late and find that through indolence, or under the spell of a false philosophy, they had permitted their free institutions to be destroyed at home.

MR. HULCY also is president of the Lone Star Gas Company, Dallas, Texas. In the address which closed his term as president of the trade association of the $9 billion gas industry, he declared that the gas industry is thoroughly healthy and forward moving.

Its method of facing its problems, its line of advance to new high levels, and the general picture it presents both as a business and as a public-serving institution, prove the gas industry measures up fully to high standards, he said.

Hulcy then declared:

> We can take just pride that the gas industry, and closely related industries, have contributed a full share toward raising the standard of living in America. During the past five years, from 1946 to 1950, inclusive, the gas utility companies and pipeline companies invested nearly four billion dollars in the purchase and construction of new plant and equipment. During the next five years, from the beginning of this year to the end of 1955, they plan to invest in excess of four and a half billion dollars more.

He stated that during the current year the gas industry is continuing the expansion of its services to new customers and to new record levels. This is shown by the figures for the fiscal year that ended June 30th last. More than 1,000,000 new customers were added during the 12-month period, bringing the total to 24,536,300.

He went on to point out that gas utility sales amounted to considerably more than 45 billion thermal units, an increase of 6 billion therms over the previous comparable period. Revenues were increased by nearly $280,000,000 or by 15.4 per cent and reached a level well above a billion dollars.

He then turned to the subject of natural gas reserves. He declared:

> Our reserves of natural gas continue to increase in the face of this expanded production. During the calendar year of 1950, when nearly seven trillion cubic feet of natural gas were produced, the recoverable reserves were increased by more than five trillion cubic feet. On December 31st last the proved recoverable reserves of natural gas amounted to 185.6 trillion cubic feet, having doubled in ten years.

THE gas official then observed that the price of gas service to the households of the country has remained practically unchanged during a period when the prices of almost everything else were soaring. The change in the price of gas since the outbreak of World War II has been scarcely 2 per cent, while that of food, for example, has increased more than 100 per cent.

Mr. Hulcy concluded his address with a plea for nonpartisan unity for the preservation of the heritage of constitutional government and free economy that is rightfully ours.

PAD Should Continue

C. PRATT RATHER, assistant deputy administrator, Petroleum Administration for Defense, believes conditions are such that the Defense Act will have to be continued in some form when it comes up for renewal next April 1st.

"PAD will have to be staffed," Mr. Rather told the opening session of the American Gas Association convention. "As you all know there is criticism from some sources of industry men in government but I am prepared to stand or fall on this statement: God help government, and industry too, if this sensible alliance is not maintained."

He continued:

> The gas industry has been called on to help government. It has a patriotic duty to do so and it has a selfish interest in seeing that men who know something about the industry are doing the job so that the job will be well done.

Rather claimed that the necessary man power must be supplied and that man power must be willing to work for government. "I insist that this can be done —can be done in all fairness to government and the industry—can be done for the benefit of the nation and all of its people."

Rather recalled that when the Defense Production Act was passed, AGA felt that the gas industry was sufficiently important to be classed as a defense-supporting industry and fitted into the defense structure in the same way as petroleum, electric power, solid fuels, and others.

HE stated that in the debate that followed, it was readily admitted that gas was a defense-supporting industry. The question was whether it should be a separate agency or a part of the Petroleum Administration for Defense, which was already in existence.

The PAD official declared:

> I personally did not participate in those discussions but if I had, I suspect I would have been strong in my support of having an independent agency. That certainly would have been the normal position to take. Based on my experience to date, I think I would have been wrong for two reasons.

First, in the broad sense of the word, the gas industry is becoming more and more a part of the oil industry. About 60 per cent of all gas consumers use straight natural gas. A majority of those who do not use natural gas use gas derived in part from natural gas, oil propane, or butane, all of which are petroleum products. The gas industry leans heavily on the oil industry for its supplies and the oil industry surely must value the gas industry as one of its most important consumers and means of marketing its products.

Second, together both groups are strengthened in presenting their claims for materials—and they use the same kind, particularly line pipe. Far better a united front than a divided one.

Mr. Rather continued "I don't mean to say to you that there is no competition within PAD for materials. There is. But when men of integrity, thinking in terms of the national interest and the defense effort, look objectively at the projects before them, I have found the answer arrived at is sound and defensible."

The gas official stated that the resulting program presented to the Defense Production Administration can be supported and argued vigorously without getting DPA confused by bickering between two claimants for the same thing. Most important of all, the National Production Authority can then proceed to implement the program and schedule the production to get the maximum results.

He then discussed the once-controversial question of where to put the gas industry in the defense setup, stating:

> I think the decision to treat the gas industry as a part of the oil industry and incorporate it in PAD as an autonomous branch on an equal footing with oil was a wise one. So far it has worked well, but keep in mind, it is men who make it work. And here I want to compliment Bruce Brown, who is Deputy Administrator, Al Frame, who is my opposite number in the domestic oil branch, and Strib Snodgrass, who has the same position in the foreign oil branch.

He pointed out that the gas branch was established late. It was a reluctant addition and has not handled itself too well in becoming a part of PAD. He added that it would have been awfully easy for the old heads to have given it a cold shoulder, make it fight for everything it got, and generally taken it for a buggy ride in the mystic maze of Washington procedure.

He continued:

> This was not done. I think the reason it was not is because of the broad caliber of the men I have named and also others who were there and knew their way around.

He suggested that PAD can offer a meeting ground where solutions to broad industry and national problems are sought.

Mixed versus All Natural Gas

Analyses and conclusions drawn by an eastern utility in considering change in its standard gas were presented at the operating section session of the convention by E. G. Boyer.

In a comprehensive paper which has been printed for distribution, Mr. Boyer, manager, gas department, Philadelphia Electric Company, said that, so far as his company is concerned, "100 per cent natural is not the answer for its situation."

Like many other manufactured gas companies, Boyer said that the Philadelphia Electric Company has experienced the swing to gas for house heating, and has had to do something about it.

Boyer stated:

> After careful analysis of the factors involved, both economic and otherwise, our decision was to change to a new standard gas of 800 BTU and 0.58 specific gravity.

He went on to review the company's load growth and plant capacities before and after natural gas became available to the area, then analyzed the advantages

and disadvantages of 100 per cent natural gas compared with mixed gas.

Admitting that some companies have decided on 100 per cent change-over, Mr. Boyer concluded that the purpose behind his paper was "to present the principles behind our decision."

The gas official concluded that these principles of theory, analysis, practice, and logic, which have been presented, have proved to be sound. He added that he believes that if a company is faced with a similar problem of changing its gas standard, an application of these principles will be helpful in arriving at the true conclusion as to whether or not 100 per cent natural gas is the answer for its own situation.

New Conversion Plant Idea

A GAS industry official proposed a system of conversion plants to fortify United States fuel supplies.

The plants would be built at strategic points along the present natural gas pipelines and coal reserves would be used to produce additional gas.

In a speech given at the convention of the American Gas Association, Frederic O. Hess said the new system "would be the TVA or the Coulee dam of the gas industry, but would be the product of the industry, not of the government."

Mr. Hess is retiring president of the Gas Appliance Manufacturers Association.

He also proposed that present pipelines be interconnected to assure improved service from Kansas City to New England and southward to Tennessee.

At present, he said, the gas industry is unable to meet demands for gas heating in millions of projected new homes, despite the existence of 260,000 miles of pipelines for natural gas alone.

To help solve this problem of supply, Mr. Hess declared the plants also could be used for storage capacity, stocking up stand-by gas supplies to meet seasonal demands.

Other possible uses of the plants suggested by Mr. Hess include facilities for the production of oil and gasoline from coal and the production of valuable chemicals.

Confiscation by Taxes

THE confiscatory quality of taxes on individuals reaches into corporations, W. G. Marbury, president, Mississippi River Fuel Corporation, St. Louis, told delegates meeting at the annual convention of the AGA. Stating that the views he expressed were his own, and did not represent any company or industry, Mr. Marbury said that taxes were drafted and enacted by politicians who are too subtle to spell out any of the confiscatory qualities of the tax laws.

Most businesses and businessmen consider taxes as a cost item which must be passed along to the public, he said. There may be a long lag in the shift to the consumer, but there is no doubt as to the ultimate result. Utility taxes are type of utility costs, he said. In his company the taxes amount to more than 20 per cent of the selling cost of gas. The Laclede Company in St. Louis pays about 14½ cents per MCF in direct taxes to the Federal government, and by the time this and other taxes are passed along about 27½ cents of every dollar the consumer pays for gas is for taxes.

Gas transmission companies have spent billions of dollars in expanding facilities. This construction was financed by fixed debt and by equity financing. Bonds and other fixed debt must be paid in twenty years and are covered by sinking funds or other means of assuring payment of this debt.

On the other hand, the stockholder's company must meet all sorts of obligations before any dividends can be paid on stocks. The Federal government will receive about 52 per cent of net earnings in taxes. The dollar has devalued since many stockholders invested it and the outlook for any appreciation in the value of his investment for the stockholder looks dim, Mr. Marbury said.

See, also, page 660.

—D. T. B.

The March of Events

In General

NARUC Convention

APPROXIMATELY 650 delegates and visitors from 47 states, territories, and the District of Columbia attended the sixty-third annual convention of the National Association of Railroad and Utilities Commissioners at the Francis Marion Hotel at Charleston, South Carolina, beginning on October 16th and concluding October 19th.

Excerpts and views from the various committee reports and addresses will be presented in the November 22nd issue of PUBLIC UTILITIES FORTNIGHTLY.

Retiring President George H. Flagg, public utilities commissioner of Oregon, opened the first session with an address calling for increased state regulatory powers. He hit at the expansion of public ownership based on tax advantage and exemption from regulation. He made an interesting comparison between the former abuses of private utility system promoters (which have been corrected) and modern promoters of public ownership expansion (who have not been curbed). "I have no more sympathy for the new crop of racketeers who would justify public ownership on this (tax-exempt) basis and use the revenue bond as an instrument for looting the public than I have for the burglars who manipulated themselves into millions some years back in juggling utility stocks," said Flagg. "Sad experience has resulted in the passage of laws that have enabled state regulatory authorities to eliminate the old-style manipulator. It is to be hoped that something sound and practical can be done to clip the wings of his successor."

General Solicitor John P. Randolph reviewed the activities of the Washington headquarters during the past year. Clyde B. Aitchison of Washington, D. C., member of the Interstate Commerce Commission, called on the states for the greatest possible assistance in helping the Federal government to carry on its valuation adequately.

Main feature on the second day was the announcement by Vice Chairman Paul A. Walker of the Federal Communications Commission that an agreement had been reached among staff experts of the FCC, a special NARUC committee, and the Bell system on cost allocations which is expected to ease the pressure on intrastate rates, as distinguished from long-distance interstate rates. (See page 645.)

In the afternoon of the second day, delegates inspected facilities of the South Carolina Public Service (Santee-Cooper) Authority at Moncks Corner, and other places of interest in and near Charleston.

J. C. Darby, chairman of the South Carolina Public Service Commission presented the report of the executive committee on resolutions on the third day. One of the features of this report was a resolution condemning the so-called "preference clause" of the Federal statutes, under which public power must be sold to public agencies ahead of private utilities. This provision was criticized as an unfair discrimination against the customers of business-managed electric utility companies. It was adopted following a discussion on the floor, in which California commission delegates voiced some opposition.

Also at this session, Chairman John C. Doerfer of the Wisconsin Public Service

Commission talked on the need for keeping the public better informed on the duties and activities of state regulatory commissions. He said that commission rate regulation "never was conceived as an effective instrument to control inflation."

At the afternoon session of October 18th, Chairman John H. Hessey of the Maryland Public Service Commission spoke on "Utility Regulation under Rising Cost Conditions." Incidentally, a special committee on utility taxes report contained a statement of Chairman Hessey, previously made to Congress, favoring the substitution of an excise tax on utility customers instead of uncertain retroactive increases of corporate excess profits tax which bear unfairly on regulated utility patrons and make rate regulation most difficult. This points out that the excise tax could be entirely collected by the government without disturbing rates or requiring the diversion of rate revenues to corporate tax payments.

At this session, the following officers of the NARUC were elected for the forthcoming year: president, J. C. Darby, chairman of the South Carolina commission; first vice president, Eugene S. Loughlin, chairman of the Connecticut Public Utilities Commission; second vice president, C. L. (Roy) Doherty, chairman of the South Dakota Public Utilities Commission. The next annual convention of the NARUC will be held in Hot Springs, Arkansas. Dates and hotel arrangements will be determined at a meeting of the executive committee, scheduled for November, 1951.

On the concluding day of the convention, Chairman Benjamin F. Feinberg of the New York Public Service Commission gave the report of the committee on progress in the regulation of public utilities, among other important committee reports. The convention also heard C. Pratt Rather, assistant deputy administrator of the Petroleum Administration for Defense, discuss recent Federal emergency control regulation affecting the natural gas supply problem. Virginia Corporation Commissioner H. Lester Hooker, at the same session, criticized the gas industry for "lack of foresight" in seeking to serve new territory without adequate supply to protect service to present consumers.

AGA Elects Officers

At the recent annual meeting of the American Gas Association in St. Louis, Missouri, George F. Mitchell, president of the Peoples Gas Light & Coke Company, Chicago, was elected president of the association for the coming year. (See page 656 for excerpts from leading addresses.)

Other officers elected included Charles E. Bennett, president, Manufacturers Light & Heat Company, Pittsburgh, Pennsylvania, first vice president; E. H. Eacker, president, Boston Consolidated Gas Company, Boston, Massachusetts, second vice president; and Edward F. Barrett, president, Long Island Lighting Company, treasurer.

Hiram J. Carson of Omaha, Nebraska, received the association's Distinguished Service Award. Carson, first vice president of the Northern Natural Gas Company of Omaha, was cited for development of large diameter pipeline.

Nearly 5,000 delegates, representing the leading gas utility companies and gas appliance manufacturers in the United States and Canada, were in attendance.

Plans were announced for the next meeting, to be held in Atlantic City, New Jersey, during the month of October, 1952, with manufacturers' exhibitions being featured.

Arkansas

Gas Rates Raised

Customers of the Midsouth Gas Company in 14 Arkansas communities were notified last month that rates were being increased an average of 14 per cent as a result of a wholesale rate increase by

Mississippi River Fuel Corporation to Midsouth, the distributing agency.

The Midsouth schedule, on file with the state public service commission, contains a "cost of gas" clause which provides the exact amount of any increase in the cost of wholesale gas may be passed on to consumers.

Mississippi River Fuel Corporation has posted bond with the commission to cover the temporary increase while FPC considers a permanent increase.

California

Application Dismissed

THE state public utilities commission recently dismissed without prejudice the application of the California-Oregon Power Company for electric rate increases in a number of northern California and southern Oregon communities.

The commission noted the company, in a letter dated September 28th, asked permission to withdraw its application, which was the first request for the general rate increase made by the company in thirty years.

A commission spokesman said no reason was given for the withdrawal and it was not known whether the company intended to resubmit a revised application. The company, in its original application, sought authority to increase rates by $1,043,000.

New Hampshire

Seeks Emergency Rate Relief

THE Public Service Company of New Hampshire has filed with the state public utilities commission a petition asking for immediate emergency rate relief in the form of a 7 per cent surcharge on bills to produce $979,504. A new set of permanent rates was filed which, if granted, will increase company revenues by approximately 10 per cent above rates now in effect. The permanent rates, if granted, would include the 7 per cent surcharge.

In seeking emergency rate relief, the company noted that its earnings in 1951 were falling far short of the 5.41 per cent rate of return the state commission expected the company would earn when it granted $600,000 new revenue last July after nineteen months of hearings. The company has sought $2,250,000 in new revenues.

The company has also filed a petition for authority to raise $5,000,000 new capital in common stock this year to finance new construction.

South Dakota

Electric Firms Double Investment

SOUTH DAKOTA private electric companies more than doubled their investments the past five years to meet increased demands for electricity, the South Dakota Electric Information Institute reported recently.

Plant capacity was more than doubled during the 1945-50 period, and the average cost to users was cut from 3.19 cents per kilowatt hour to 2.8 cents, the institute said. It said the companies plan to spend another $14,000,000 during the next four years to keep up with the demand for electricity.

Plant capacity was increased from 83,546 kilowatts in 1945 to 182,444 kilowatts last year. Total kilowatt-hour sales of electricity jumped from 218,000,000 in 1945 to nearly 500,000,000 last year. More than 27,000 consumers were added to the companies' lines the last five years.

More than 30 rural electric co-operatives are purchasing power at wholesale from the private companies, and their purchases increased from 5,500,000 kilowatt hours in 1945 to 87,000,000 kilowatt hours last year.

Texas

Suit to Test Gas Tax Law Expected

LEGAL attack on the natural gas gathering tax would not be sufficient reason in itself for calling a special session of the state legislature, Governor Allan Shivers said recently. The governor said he understood suit would be filed to test the validity of the tax (nine-twentieths of one cent per thousand cubic feet) levied by the present legislature on the gathering of natural gas into pipelines. Payments on gas gathered in September were due by October 25th. Up to October 17th, only $31 of an estimated $1,166,000 due the state government had been paid.

It was believed the larger pipeline companies would pay the tax under protest and file suit for recovery of payments. In that event the state could not spend the money collected while the matter was in litigation.

Opponents have argued that the tax violated the Federal Constitution because it was a tax on interstate commerce.

Washington

Bus Line Offered for Sale to City

SPOKANE CITY LINES last month offered to sell their bus company to the city of Spokane for $3,000,000. The city, or some other company, will have to take over unless the company's earnings increase immediately, Darrell Peck, manager, told a meeting of city commissioners, Better Parking Association officials, and chamber of commerce representatives.

Peck said it would not cost the city a cent to buy the bus company, as far as out-of-pocket expenditures are concerned. According to his plan, the city would issue 20-year revenue bonds for the $3,000,000. The bonds would be secured by bus company assets (estimated at $4,000,000).

The city would pay for the bonds by making a profit on the bus company. The profit would be possible, Peck said, because municipal ownership would allow Spokane City Lines to escape $142,000 annually in taxes. It would only take $150,000 a year for twenty years to retire the bonds, he noted.

Wisconsin

Hydro Contracts Approved

THE state public service commission recently approved two electric companies' contracts to buy power from the proposed new Namekagon Hydro Company dam in Washburn county. The North Western Electric Company, Grantsburg, and the Dahlberg Light & Power Company, Solon Springs, each propose to buy 3,500,000 kilowatt hours of power from the company every year.

North Western, serving the western sections of Polk and Burnett counties, will build a $45,162 substation to connect with the generating plant, and Dahlberg, which serves Douglas and part of Washburn county, will build a similar station for $32,957.

The Hydro firm's dam, which has not been started, is to span the Namekagon river at Spooner and cost about $412,000.

Progress of Regulation

Power Project License Granted to Electric Company Despite Government Opposition

THE United States Court of Appeals upheld the order of the Federal Power Commission (87 PUR NS 469), granting a license to an electric company to construct a power project some distance down the Roanoke river from a government project. The granting of the license was held to be within the commission's power. The court concluded that there was no basis for holding that the commission had not properly exercised the discretion vested in it by law.

The appeal was taken by the Secretary of the Interior and a co-operative association. The court held that neither was an aggrieved party entitled to appeal. It noted that the Secretary of the Interior merely has statutory power to dispose of surplus power from government projects. No duty or responsibility could arise until the government had authorized the project and entered upon its construction, according to the court. Consequently, the co-operative association, whose only interest was to purchase power which the Secretary of the Interior might sell, was held to have no such right or duty with respect to the construction of the power project as would give it the right to appeal from the commission's order.

The Secretary of the Interior opposed the granting of the license on the ground that the project's site was reserved for development exclusively by the United States in the Flood Control Act of 1944. That act approved the general plan for development of hydro projects, including sites in the Roanoke river basin. It specifically authorized construction of government projects at two other points on the river.

The court conceded that where Congress takes over a project and authorizes its construction by the United States, the effect is to preclude the commission's granting a license for its construction by a private corporation. It did not believe, however, that the Flood Control Act could be so construed in this case. The fact that the act expressly authorized certain of the projects was deemed to be clear indication that others embraced within the over-all plans were not authorized.

The court said that if Congress, having established the Federal Power Commission to handle power projects, desired to strip it of part of its control over the important rivers of the nation, it would have done so expressly. It was not deemed reasonable to assume that, in approving over-all plans of river basin development and undertaking flood-control projects under these plans, Congress intended to withdraw from development by private enterprise the straight power projects lying in the river basins.

The commission was not precluded from granting the license by reason of its approval of the comprehensive plan for the development of the Roanoke river basin. That approval had been granted several years ago and Congress had taken no action in the meantime with respect to this particular project. The

court said that it would be unreasonable to hold that where the government had no dam and had made no decision to build one, the commission would be prevented by such approval for a longer period from granting a private license. The natural resources of the country should not be withheld from needed development because of a recommendation of the commission on which Congress has failed to act, the court said.

It was argued that the granting of the license to a private company involved the surrender of valuable power rights belonging to the public, since the government could obtain the capital necessary for development at a low interest rate and could supply current at a low cost. The court rejected this argument. It pointed out that the question as to whether a power project should be licensed for construction by a private enterprise or constructed by the government itself was one which had been entrusted by statute to the judgment of the commission. The commission had given consideration to the question when it granted the license. The court of appeals said:

> The proposed development will involve the investment of some $27,000,000 by the power company. It will have a total installed capacity of 91,000 kilowatts. The annual value of its capacity and energy will be around $400,000 over and above annual costs. All of this is being lost so long as the project is not constructed; and its construction, even though by private enterprise, adds just that much to the wealth of the country and the available electrical energy, so greatly needed in this period of national emergency. To permit its construction as provided by the license, will surrender no public assets to anyone but will merely permit the power company to develop the property which it has already acquired for power purposes and thus utilize a source of power now being wasted.

United States ex rel. Chapman v. Federal Power Commission et al. October 1, 1951.

Demand and Energy Type of Wholesale Electric Rate Authorized

An electric company was authorized by the Wisconsin commission to increase rates to yield a return of 6.1 per cent on its book value rate base. The new rates would yield a return of 10 per cent on equity capital. This was deemed sufficient to provide a market for the company's securities.

One of the cities served by the company complained against the present form of wholesale rate, which was an hours' use type of rate. The city claimed that it should be a demand and energy type of rate. The commission observed that under an hours' use type of rate, increased purchases without an improvement in load factor do not offer any benefits to the purchaser in the form of lower average cost.

Under a demand and energy type of rate, increased use falls in the lower blocks of the rate and affords benefits in the form of lower average costs even if the load factor is not improved. The commission pointed out that the demand and energy type of rate has become standard where large blocks of power are involved. It concluded that the city's request was reasonable and that a demand and energy type rate should be designed to provide approximately the same revenues that would accrue under the existing type of rate.

One customer claimed that the utility should operate under price ceilings and that there was no reason why it should pass its income taxes on to customers. The commission said, however, that as opposed to the privileges and opportunities of industry generally, utilities, in effect, operate under price ceilings and controls at all times. It held that income taxes should be allowed as operating expenses for rate-making purposes. *Re Wisconsin Hydro Electric Co. 2-U-3557, 2-U-3529, August 23, 1951.*

Court Refuses to Upset Rate Fixed by County Board When Confiscation Not Shown

THE Pinellas Utility Board successfully resisted an attack upon an order requiring a reduction in rates of the Florida Power Corporation. The Florida Circuit Court refused to interfere in the absence of proof that the new rates would be confiscatory. Judge Wehle said:

> The function of rate making is purely legislative in character, even though exercised by a subordinate administrative body (such as the Pinellas Utility Board) to whom the power of fixing rates has been delegated. Since the rate-making power is legislative rather than judicial, it is not within the power of a court to fix directly or indirectly the rates to be charged by public utilities.
>
> The duty of courts with respect to rate making is merely to inquire concerning results, and where the issue is whether the rates prescribed by public authority are confiscatory, the court is not bound to accept the findings of the rate-making authority though they are supported by substantial evidence, but may exercise its independent judgment upon the facts.

Both parties agreed that some part of the cost of the system outside of Pinellas county should be included in the Pinellas county rate base as used and useful, and that some portion of the operating expenses of the remainder of the system should be charged to Pinellas county consumers. They disagreed, however, as to the method of allocating capital cost and operating expenses of the remainder of the system.

The company contended that the entire system was integrated, while the board contended that most of the time all power required in Pinellas county can be generated by a plant in that county and that occasional peaks exceeding the productive capacity of that plant can be met by power secured from a plant approximately one hundred miles away or purchased from the connecting system of the Tampa Electric Company of Florida.

The court upheld the board's view that its "two-plant system" of allocation was proper. Judge Wehle said:

> The mere fact that the power company owns a connected system extending over a large area does not by the application of the magic phrase "integrated system" require part of the costs of the entire system to be allocated to Pinellas county. The company's system in turn is connected with or integrated into practically all of the power companies of the southeastern United States, but no one would suggest that Pinellas county be assessed with a share of the costs of all these other companies, even though in theory, if a catastrophe wiped out all of the generating plants in Florida, the connecting companies in other states could be called upon for current to be distributed in Florida. The test is what portion of the system in Florida is "used and useful" in Pinellas county and not what could possibly become "used and useful" in case of catastrophes.

The board is prohibited by law from making any rate which does not give the utility a return of at least 6 per cent on its investment in the county. Such a return was allowed, and the court did not find that it was confiscatory. Courts of various jurisdictions, it was said, have sometimes found it difficult to distinguish between "confiscatory" and "unreasonable." The two are not always synonymous.

In the words of Judge Wehle:

> A rate may be fixed at what would seem to be a low level by a regulatory body, and may appear unreasonable to a reviewing court and yet the court has authority to invalidate the rate order only if the rate is so unreasonable as to be confiscatory.

Florida Power Corp. v. Smith et al. August 31, 1951.

Commission Lacks Power to Compel Capital Changes

THE Massachusetts Department of Public Utilities held that it has no authority to require a transit company to decrease the par value of its common stock and to transfer a very large portion of capital stock to surplus in order to eliminate a surplus deficit. It was pointed out that the statute gives the department wide powers of supervision over a public utility company's capital structure and requires the company to obtain approval before making any substantial capital changes. The department observed, however, that there is a substantial difference between its supervisory and plenary power over rates, practices, and operations of the company and the power to compel the company to take affirmative action necessary in order to decrease the par value of its securities.

Such changes must stem from the action of the stockholders and directors, and these actions are peculiarly within their functions. The department concluded that its only power in relation to this subject is to give or withhold its approval upon application of the corporation.

It was deemed to be axiomatic that the department exercise only those powers delegated to it by the legislature although such grant of powers may be broadly construed. The department found that it had no statutory power to compel the company to make the capital changes, however desirable they might be. *Re Berkshire Street R. Co. DPU 9119, September 14, 1951.*

Court Lacks Jurisdiction over Rates to Submeterers

THE New York Supreme Court disclaimed jurisdiction in the first instance of a submeterer's action against an electric company to enjoin the collection of rates which became effective under commission orders. The company had filed revised rate schedules canceling service classifications making electricity available at wholesale rates to submeterers who resold to tenants at retail rates. The revised rates had become effective under orders of the commission.

The court ruled that even if there were unexpired contracts for wholesale rates between the submeterers and the corporation when the new service classification became effective, the company could not charge the old rates. It would have to charge rates prescribed by the new schedules and classifications.

The new rate schedules did not afford the complaining parties the price differentials which they had formerly enjoyed. They claimed that this source of income was withdrawn and that the value of their property had been diminished by the utility's action. Consequently, it was argued that the new rate was discriminatory and violative of the customer's constitutional rights. This contention was rejected by the court, which cited Ten Ten Lincoln Place *v.* Consolidated Edison Co.(1947) 190 Misc 174, 69 PUR NS 108, affirmed (1948) 273 App Div 903, 73 PUR NS 156, as the basis for this action.

In that case the court dismissed the complaint upon the ground that it did not have jurisdiction of the subject of the action. It held that a consumer did not have any vested right to utility service or to any particular rate except to the extent that the Public Service Law granted it such right. The customer was not entitled to invoke constitutional guaranties of due process or equal protection under such circumstances.

The court believed there, as in this case, that whether differentials in rates established by public utility corporations were unreasonable and discriminatory was a matter which the commission, and not the court, should resolve. Customers had available to them, if aggrieved, the remedies of rehearing before the commission as well as a right to a judicial review of an adverse administrative determination.

The claim that the customers had been denied a hearing was also rejected. The service classifications involved in this action had been the subject of extended hearings before the commission and the customers had been represented and had participated in those hearings. It was admitted that some time had elapsed after the hearings before the order granting the company the right to put the new service classification into effect was granted. However, the court said, the customers were not denied due process merely because further hearings were not held immediately prior to the issuance of the permissive orders. As a matter of fact, it said, the commission could have authorized the rate changes without notice.

It was argued that that provision of the Public Service Law authorizing utilities to establish service classifications for rate-making purposes constituted an unconstitutional delegation of legislative authority. This argument was deemed to be without substance. The court observed that the statutory provision permitted a public utility company to establish service classifications only after they had been filed with and approved by the commission.

The court concluded that the rate-making power had been confided by the legislature to the commission, a body of experts with powers of inquiry adequate to the task. The legislature had validly delegated the whole business of rate making, leaving to the utilities only the right to initiate rates. *Childs v. Brooklyn Edison Co. 105 NYS2d 503.*

Need for Continuity of Supply Justifies Inclusion of Coal Mines In Rate Base

THE Pennsylvania commission rejected a new rate schedule proposed by an electric company and directed it to file a tariff which would produce a rate increase amounting to about one-half of that proposed. The commission ruled that the company's return on the lower rate would amount to 6 per cent and that such return was reasonable.

The commission, in determining the company's rate base, gave consideration to evidence showing the original cost of plant and equipment, reproduction cost, and trended original cost at spot and average price levels higher than original cost.

Contributions in aid of construction were deducted in arriving at a valuation of the property where the original cost of items acquired through these contributions was included in the original cost rate base.

The value of coal mines owned by the company was included in the rate base inasmuch as the company's acquisition of the mines was to assure it a continuity of supply. The company's purchase of the mines was not considered an abuse of discretion.

Construction work in progress was included in the rate base. The commission pointed out that the construction had been placed in service and that the company in its claim for annual operating expenses had reflected the economies being realized by the new plant on an annual basis.

Property held for future use was excluded. Eighty-five per cent of the amount claimed by the company for this item represented three unused coal land tracts which in all probability would not be dedicated to the public use in the foreseeable future.

The excess of the "arm's-length" purchase price of the company's property over the original cost was not included in the original cost rate base, but the commission said it should be a factor in a determination of fair value. Amortization of the plant acquisition adjustments over a 15-year period was considered a proper operating expense.

The cost of a 90-day coal supply was included in the company's allowance for materials and supplies so that the possibility of service interruption in the national emergency would be minimized.

In its development of trended original cost and reproduction cost, the company used trending factors derived from the Handy index numbers. The results obtained by this method were accepted in part and rejected in part.

The company's estimate of accrued depreciation by the competitive service value method applicable to spot price reproduction cost was not accepted. This method, the commission said, results in a value which is fixed and without regard to price level. The deduction of the same amount of value from various amounts representing original cost and trended original cost at various price levels other than spot price would not result in a determination of accrued depreciation but would reflect, among other things, the difference in price levels used in the various measures of value.

Finally, the commission allowed all of the company's pension costs, including annual payments amounting to 4 per cent of the unfunded reserve. As a practical matter, the commission said, the allowance or disallowance of some portions of the pension costs would have a negligible effect on the company's rates. The company's plan to amortize the unfunded reserve over a 37-year period was not considered an unjust burden on present ratepayers. *Public Utility Commission et al. v. Duquesne Light Co. Complaint Docket Nos. 14968 et al. August 29, 1951.*

Operating Ratio Used to Test Transit Rates

THE Hawaii commission allowed a transit company a modified rate increase which included a zone fare feature. The new rates would afford the company an operating ratio of 94.05 per cent after taxes and a return of 8.86 per cent on its rate base.

A contention by the utility that its operating ratio was a better test of the fairness of its rates than the conventional method of testing by relating earnings to a rate base was given careful consideration by the commission. These ratios, the commission said, are "significant indicators of the degree of margin between expenses and revenues, affording a ready measure of proximity to the 'break-even' point." They also readily indicate the percentage of upward variation in expenses which may occur before a company goes "into the red."

In its discussion on this point, the commission observed that a number of differences exist between transit companies and other types of utilities. These differences were described in these words:

> Compared to other utilities, their invested capital is generally small in relation to annual income and expenses, in most cases being less than the revenues or expenses and in many cases much less. In addition, a high proportion of the total investment of most transit companies is in short-lived vehicular equipment, which fact tends to cause sharp variations in the depreciated rate base from year to year. These narrow and unstable rate bases of transit companies make very shifty footings upon which to base findings as to fair rates of return. Besides being cursed with sharply variable and narrow rate bases, transit companies generally have operating expenses made up of an unusually high proportion of labor and other items which are extremely sensitive to economic pressures in the community, as compared to other utilities. Revenues of transit companies are also sensitive to changes in the local economy — unemployed persons do not ride the busses; private automobiles compete for a transit company's business; and, when funds are scarce, short-haul riders walk.

After calling attention to the fact that a number of state commissions and the Interstate Commerce Commission have used operating ratio as a basis for testing the reasonableness of earnings, the commission stated that "it would rely on

a threefold test; namely, the operating ratio resulting therefrom, the adequacy of the net income produced to meet the company's reasonable financial requirements, and the relationship of such net income to the rate base expressed in per cent, with the first two tests being given as much or more weight than the third."

The commission expressed regret that its adoption of zone fares placed an unexpected burden on residents of outlying and suburban areas but indicated that the institution of zoning could no longer be deferred without prejudice to the long-term welfare of the company and its patrons as a whole. *Re Honolulu Rapid Transit Co. Ltd. Docket No. 1119, Order No. 731, September 17, 1951.*

City and Chamber of Commerce Approve Rate Increase

THE South Dakota commission granted a telephone company's application for a rate increase which was favored by the city government, the chamber of commerce, and many other organizations. The company's return for the previous year had amounted to only 1.46 per cent.

The new rates would permit the company to earn 5 per cent on net investment. This return was not considered excessive for a company which operated its exchanges on an economic basis and maintained a high quality of service. *Re Peoples Teleph. & Teleg. Co. F-2336, August 2, 1951.*

Other Important Rulings

THE Colorado commission, in granting electric rate increases, held that even though going concern value may be an appropriate element in a rate base, such a figure could not be used where valuation was based on actual book cost less full depreciation and where promotional, organization, and development expenses had been allowed as operating expenses. *Re Frontier Power Co. I.&S. Docket No. 330, Decision No. 37285, August 27, 1951.*

The Rhode Island department, in authorizing a temporary telephone rate increase pending appeal from a previous rate order to enable the company to earn a 6 per cent return, held that the company could not charge its borderline customers more than the rates paid by out-of-state subscribers who received service from the same exchanges. *Re New England Teleph. & Teleg. Co. Docket No. 530, July 27, 1951.*

The United States Court of Appeals ruled that a labor union which had been permitted by the Civil Aeronautics Board to intervene and present claims in a proceeding before it was entitled to be heard on a petition for a review of the decision of the board. *Western Air Lines v. Civil Aeronautics Board, 190 F2d 340.*

The Wisconsin commission authorized a telephone company to discontinue unlimited interexchange service between certain exchanges where it appeared preferential and unjustly discriminatory to burden the subscribers who did not use such service with the cost of maintaining that service for the few who did use it. *Re Commonwealth Teleph. Co. 2-U-3608, September 21, 1951.*

A railroad was refused authority to discontinue an agency station by the Indiana commission where the amount of business transacted at the station and the convenience and necessity of the public far outweighed the railroad's need to economize by discontinuing the agency, and where the revenue of the station over the past few years had remained at a high level and in just proportion to the out-of-pocket expense of the station. *Re Baltimore & O. R. Co. No. 22724, September 13, 1951.*

Appendix–Part I

Important addresses on legal, economic, financial, and other problems, delivered before the Public Utility Law Section of the American Bar Association at New York city, September 17, 18, 1951.

Recent Regulatory Developments

By ELLSWORTH NICHOLS*

By this time you should have received the report of the Standing Committee appointed by the Public Utilities Section to review developments during the past year. The summary which precedes the body of the report directs attention to some of the important regulatory developments and their location in the report. I will not repeat what is stated there. Attorneys selected as panel members to discuss developments during the year will present their views on topics selected by the council, and I do not want to trespass upon the fields assigned to these experts.

Following the example of the committee members in the preparation of this factual report, I do not propose to express my own opinion upon controversial regulatory questions. I will leave that for those to whom particular subjects have been assigned. My purpose is to supplement our report by directing attention to a few decisions which came to our notice at a date too late for inclusion in the report, and also to mention a few interesting developments subsequent to July 1st, which will be covered by next year's report but to which I will refer briefly. I understand that the discussions at these section meetings will be printed for distribution.

Among decisions of national interest is that of the Federal Power Commission in the Phillips Petroleum Company Case. It is significant as a further attempt to determine where the line is to be drawn between Federal and state regulation. The commission decided that the company was not a natural gas company subject to regulation under the Natural Gas Act. The decision rested partly upon the exemption of production or gathering of gas under § 1(b) of the act and partly upon the principle that Federal regulation of rates for the sale of gas, technically consummated in interstate commerce but during the course of production and gathering, and closely connected with that process, would be inconsistent, or a substantial interference, with state regulation of producers and gatherers of gas. The Phillips Petroleum Company, as you know, constitutes one of the larger integrated units in the petroleum industry. It owns oil and gas reserves, gasoline plants, refineries, and chemical plants. It operates crude oil pipelines and market outlets.

The main point of controversy was whether there was a transportation of natural gas after completion of the producing and gathering activity. The substance of the decision was that jurisdiction did not attach where the company produced the gas, moved it to processing plants where the gas was made salable, moved the gas through such plants, and transported it through relatively short lines from the processing points to various points where sale or delivery, or both, to interstate pipeline companies took place. This case will probably be appealed to the courts and the final disposition of the controversy may appro-

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priately be covered in next year's report.[1]

UNUSUAL accounting problems have arisen as a result of the issuance of certificates by the Defense Production Administration authorizing rapid amortization, for Federal income tax purposes, of the cost of facilities attributable to defense. The Michigan commission recently told The Detroit Edison Company how it should handle its accounts to cover this situation.

The primary effect of the special rapid amortization of costs of defense facilities, said the commission, is to reduce the amount of Federal income taxes payable during that amortization period and to increase the amount of Federal income taxes payable thereafter during any remaining lives of the properties so amortized. Current tax reductions resulting from special amortization are subject to liability for the larger future taxes, also resulting from such early amortization, and are not available for addition to surplus.

The actual effect, said the commission, is not to create a windfall but simply to defer Federal income taxes, since the aggregate income tax payments are the same, if the tax rate remains constant, whether the deduction is taken in sixty months or spread over a longer period. This seems to be a different view from that expressed by critics who have called this amortization procedure a gift or a windfall for industrial organizations.

The commission ordered The Detroit Edison Company to set up special accounts to handle what it called "deferred Federal income taxes." After completion of the amortization under the necessity certificate, or after its discontinuance by the company, these special accounts will reflect amounts equal to the increase in Federal income taxes payable resulting from the fact that normal depreciations cannot be deducted because of previous amortization of the property.[2]

The Interstate Commerce Commission decided tentatively that railroad accounts filed with it shall not reflect most of this fast amortization. The carriers will be allowed to take advantage of rapid amortization for income tax purposes. They will also be allowed to write off facilities under the rapid amortization system if they can show that such facilities will have no use in transportation service after the emergency. This, of course, would not cover such items as freight cars, locomotives, and other facilities which will remain useful after the emergency. Only an occasional new spur line to a military installation or defense plant, or similar wartime project, might be written off rapidly.

RETROACTIVE increases in taxes are more serious for public utility companies than for companies which are unregulated, although industry in general is now regulated to some extent by the Office of Price Stabilization. In the early years of the income tax, the consequences were not serious, even though Congress might in October adjust the tax rate for the current year and make it retroactive to January 1st. Now, with the huge tax burdens borne by industry, the continuation of the practice of fixing taxes retroactively presents a challenge.

According to *The Wall Street Journal*, some corporate reports of earnings become pure fiction—and "not of the funny kind." The president of the Illinois Central Railroad is reported as saying that under one of the tax proposals the net income reported for the first six months of this year would have been reduced from $4.37 a share to something like $3.82. Even a retroactive tax to April 1st, as now proposed, is serious. But while an unregulated company might look ahead and adjust prices, at least to some extent, to cover prospective tax increases, the utilities are at a disadvantage since they must prove their costs before being permitted to increase rates.

In the summary preceding our report, a New York ruling against allowance of anticipated tax increases is mentioned. Also in a rate case before the Georgia commission last May, taxes were com-

[1] *Re* Phillips Petroleum Co. (FPC) Opinion No. 217, August 22, 1951.

[2] *Re* Detroit Edison Co. (Mich) D-1282-A, August 8, 1951.

puted on the current Federal income tax rate of 47 per cent instead of an anticipated 55 per cent Federal rate. The commission said that the only amount allowable is that resulting from the presently effective income tax rate.[3]

But the Utah commission, on August 10th, gave effect to the higher Federal tax rate provided in bills before Congress. The commission observed that it appeared fairly certain that the new tax would be 52 per cent compared with the present rate of 47 per cent. The same commission, after approving a 6 per cent return, allowed telephone rates to produce a 6¼ per cent return in consideration of the "possibility of increment in investment resulting from present-day construction costs."[4]

In a California case, decided at the end of June, an objection to a rate increase was based on the contention that telephone plant expansion should be curbed in an effort to stop inflation. The commission replied that the utility company was the victim of inflation the same as the public and business generally. Its prices must be kept current if it is to furnish the type of service the public is demanding. The only contribution that the company could make to halt the inflation spiral would be to stop construction of all telephone plant and not provide new service to people demanding it. The commission thought that such a program of curtailing construction as an anti-inflation measure would not meet with public approval in a state expanding and growing as rapidly as the state of California.[5]

Under the heading Apportionment, in our report, there are references to the NARUC Separations Manual. The Nevada commission, in a decision coming to our attention after copy for the report had gone to the printer, denied a telephone rate increase and said that it was not in agreement with the provisions of the manual. Nevada was called a "bridge state" over which the parent company had built and operated an elaborate system of communications between the populous East and the West coast areas, with incident service to a few communities along its lines in Nevada. It was thought that if a "more correct and true" separation of property and expenses were devised, the profits of the local company would be much greater.[6]

In the report, at page 91, reference is made to the New York commission's acceptance of schedules providing for elimination of submetering of electricity. The commission, on July 25th, released a 129-page decision dealing with this problem. The commission approved the standardization of rates and service rules in the New York area and called the practice of submetering "parasitic and undesirable," citing previous New York decisions and views expressed in other states.[7]

Antinoise ordinances and antinoise weeks have for years been a part of American life. It was for a Federal court, however, to lay down the rule that a transit company infringes upon constitutional rights of riders when it operates radio broadcasts on streetcars and busses. A person who is forced to listen to such broadcasts while traveling, according to the court, is not free in the enjoyment of all his faculties within the constitutional guaranty of liberty. The fact that a transit company and a broadcasting company engaged in this activity receive a profit and that one section of passengers are entertained, according to the court, cannot justify another group of passengers being deprived of their freedom of attention.[8]

[3] *Re* South Atlantic Gas Co. (1951) 90 PUR NS 29.

[4] *Re* Mountain States Teleph. & Teleg. Co. (Utah) Case No. 3596, August 10, 1951.

[5] *Re* Associated Teleph. Co. Ltd. (1951) 90 PUR NS 1.

[6] *Re* Bell Teleph. Co. (Nev) I. & S. Docket No. 117, June 25, 1951.

[7] *Re* Consolidated Edison Co. of New York (NY) Case 14279, July 25, 1951.

[8] Pollak *v.* District of Columbia Pub. Utilities Commission (USCA[DC]) 89 PUR NS 131, June 1, 1951.

THE Indiana commission has denied the request of the Mohawk Sales, Inc., which promotes the sale of telephone-answering devices known as telemagnets, to compel a telephone company to permit their use. A request to suspend the company's rules against foreign attachments, said the commission, would in effect divide the responsibility for service between the company and the owners of the devices, who would not be under commission jurisdiction. The commission cautioned, however, that the telephone industry must not be negligent in developing and offering to the public a satisfactory answering device.[9]

The right of a municipality or a municipal authority to require the relocation of poles and wires was involved in a case before the Pennsylvania commission. The Harrisburg Housing Authority obtained an order from the commission requiring the Pennsylvania Power & Light Company to remove the poles and wires from the site of a low-rent housing project and to relocate them where they would not interfere with the project. The commission ruled that an electric company's right to maintain facilities within the street lines of a city is not abrogated by such a requirement. It also held that the company could not recover for the cost of relocation, since consent ordinances permitting the use of streets confer no franchise but merely authorize the use of streets subject to municipal regulation.[10]

[9] *Re* Mohawk Sales, Inc. (1951) 90 PUR NS 60.

[10] Harrisburg Housing Authority *v.* Pennsylvania Power & Light Co. (Pa) 89 PUR NS 156, June 25, 1951.

At the outset, I said that I would withhold my personal opinion on controversial subjects in the regulatory field. Members of this section may be arrayed on opposite sides. But all of us, I assume, believe that proper regulation of public utility companies is one of the barriers against the tide of Socialism and is a support for those principles not easily described but inherent in the frequently used term "free enterprise"—a term recently substituted for the word "Capitalism," a word which has become unpopular with those who press by political means to grab a share of the other fellow's savings. But Capitalism well describes the American system under which individuals have been free to earn and accumulate funds for development of industry and have been permitted to profit from their energy, thrift, and willingness to risk their savings in business.

WE hear that morality in government is at a low ebb. The blame has been cast in many directions. But let us never forget that as temptation and opportunity for immoral gain increase, adherence to high principles weakens. Federal, state, and local governments engaging in public utility enterprises, or other kinds of business, handle large amounts of money and make many contracts. Great temptation is unavoidable. To the extent that lawyers help to maintain the system of public utility operation under private ownership, subject to the police power of regulatory commissions, they help to block the advance of government into business, with the accompanying temptation to make a dishonest dollar.

The Problem of Telephone Company Earnings

BY DONALD C. POWER*

DURING the past year, as during the past five years, one of the most important problems confronting the communications industry has been the necessity of securing increased revenues to meet the constantly mounting costs of

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operation and to provide earnings sufficient to attract the capital needed to construct the plant required to meet the unprecedented and continuing demand for telephone service.

This situation has resulted in the presentation of a large number of rate cases before the various state regulatory agencies with a consequent number of new decisions by the commissions, as well as by the various reviewing courts to which appeals have been taken from commission decisions.

While these decisions follow a somewhat general pattern, there is no absolute consistency on the part of either the commissions or the courts on many of the common problems that have been presented for decision.

CERTAINLY there has been no uniformity on such issues as what is a fair rate base?—what constitutes a fair return?—what effect should service complaints have on applications for increased rates?—should commissions examine the reasonableness of operating expenses of applicants and if so to what extent?—should the legality of territorial division agreements be affirmed?—what are the factors that should determine the propriety of an exchange *versus* a company-wide or statewide basis of fixing rates?—or in fact on a number of other important and controversial matters.

The proper method of arriving at the *fair value* of a utility property for rate-making purposes continues to be the subject of controversy and discussion. Ohio by statute is still the sole exponent of the reproduction cost new less observed depreciation method of determining fair value. However, during the past year the supreme court of Ohio, upon an appeal from a commission decision in the Ohio Bell Telephone Company Case, evolved a new theory of treating depreciation when it held that the depreciation reserve to the extent that it exceeds the present or accrued depreciation of the utility's property and even though it has been reinvested in new or additional plant may not be included or treated as a part of the rate base.[1] As a result of this pronouncement, some $37,000,000 of the depreciation reserve of the Ohio Bell Telephone Company, which had been reinvested in plant, was thrown out of the rate base.

IN other states varying types of rate bases have been approved by the commissions, including a "fair value" base as defined by the Michigan Supreme Court as being a value somewhere between original cost and current costs at the time of the rate proceeding[2]; a "fair value" as defined by the Pennsylvania commission determined by giving consideration to reproduction cost at fair average prices using either 10-year, 5-year, or 1-year averages and then weighing the result with original cost to arrive at a value[3]; "net average investment" as used by the Kentucky commission[4] and "original cost" as used in Arkansas, California, New York, Virginia, and Wisconsin and many other states.

The *fair rate of return* has been equally controversial. Generally, the commissions have been agreed that a fair return is pretty closely allied to the cost of money but that is where uniformity of agreement ends. During the past year fair rates of return have been found to be as low as 5¼ per cent[5] and as high as 8 per cent.[6] Most commissions have adhered fairly close to 6 per cent but there has been a tendency in recent months to increase somewhat that rate of return. A typical example is found in the decision of the Massachusetts Supreme Judicial Court in the case of New England Teleph. & Teleg. Co. *v.* Department of Public Utilities

[1] Columbus *v.* Public Utilities Commission of Ohio, 154 Ohio State 107, 86 PUR NS 496.
[2] *Re* Michigan Bell Teleph. Co. 85 PUR NS 327.
[3] PUC *v.* Vandergrift Teleph. Co. 87 PUR NS 123; PUC *v.* Pennsylvania Teleph. Corp. 86 PUR NS 292.
[4] *Re* Southern Bell Teleph. & Teleg. Co. 88 PUR NS 1.
[5] *Re* Southern Bell Teleph. & Teleg. Co. 88 PUR NS 1.
[6] *Re* Union Teleph. Co. Michigan Public Service Commission, No. T-223-51.2.

where the court held that a return of less than 6.23 per cent was confiscatory,[7] and as a sequence to this decision the Massachusetts Department of Public Utilities quite recently[8] allowed an emergency increase to meet certain increased operating expenses in order to bring the return of the company up to the 6.23 per cent which the court had said was the lowest amount that would escape confiscation.

IN arriving at the *cost of capital* a few commissions have inquired into the cost of capital to a parent company where such a situation exists as in the case of the Bell Telephone system and the General Telephone system. It does not seem to me that this is a realistic approach and it has not been generally followed by commissions throughout the country.

Actually, the rate base and rate of return are important only as numerators that are used to produce the dollars required to maintain the financial health of the utility and so enable it to attract capital on favorable terms. The same number of dollars can be secured by using a high rate base with a lesser return as by the use of a lower rate base and a higher rate of return. Gradually, commissions are coming to a recognition of this fact, as is well illustrated by the Michigan commission in its recent decision (July 23, 1951), in the matter of the application of Union Telephone Company to increase rates.[9] In this very interesting decision the commission held as follows:

> It is apparent to the commission that prices of materials, equipment, supplies, services, and the wages of employees, together with taxes, have increased greatly since the last rate relief was afforded to petitioner. It is the policy of the commission to approve rates which are required for a sound credit standing so that the utility may attract the capital necessary for its plant rehabilitation, dial conversion, and expansion to better serve present customers and to furnish service to applicants whose orders are being held because of facility shortages. . . .

In this case the commission allowed a return of approximately 8 per cent on the company's estimated average 1951 net plant investment plus working capital, materials, and supplies.

OF course, corollary to the problem of what constitutes a proper rate of return has been the question of what constitutes a proper *debt ratio,* since it will be apparent that the greater the debt ratio the less the cost of capital within certain limits. Most commissions have agreed that debt should not exceed 50 per cent of the total capital structure and some have approved lower ratios ranging from 35 per cent to 45 per cent, which has been the ratio sought by most companies.

What constitutes a proper debt ratio is a question of considerable importance, and while it is true that a high debt ratio will decrease the actual cost of capital it likewise increases the risk of the equity security holder and leaves but little room to secure emergency funds through the issuance of additional debt securities when and as the occasion may arise.

For example, at the conclusion of the war the debt ratio of the Bell system was relatively low—probably in the neighborhood of between 30 per cent and 35 per cent. Faced with the need of financing a tremendous postwar construction program, the Bell system was able to raise large amounts of capital quickly and at relatively low cost by increasing its debt ratio. Good business judgment would now indicate that this ratio should be reduced as promptly as possible so that another emergency when and if it occurs may be as favorably met.

THE question of *service* has presented a real problem to many telephone companies and there have been an in-

[7] (1951) 88 PUR NS 73, 97 NE2d 509.

[8] *Re* New England Teleph. & Teleg. Co. 89 PUR NS 80.

[9] *Re* Union Teleph. Co. 90 PUR NS 25.

creasing number of instances where state commissions have deferred rate increases in certain exchanges where service complaints have been registered. This has occurred in Illinois, Indiana, Michigan, and in a few other states. On the other hand, many state commissions have emphatically held that service cannot be expanded and improved unless new capital is obtained and that such new capital can only be secured when earnings are adequate. This has been true in North Carolina and elsewhere, and the superior court of the state of Arizona in the case of Mountain States Teleph. & Teleg. Co. *v.* Arizona Corporation Commission, decided on February 24, 1950, reversing an order of the Arizona Corporation Commission which had decided a rate increase upon the basis of inadequate service, held as follows:

> It appears from the evidence that since the end of the recent war the company has practically doubled its investment in the state, but that notwithstanding this large additional investment, the quantity of facilities to meet the demand for the rendition of adequate service is still lacking.
>
> Anything less than a 5 per cent return on a legal rate base has been held by all judicial authorities to be confiscatory and illegal. Therefore, unless the inadequate service facilities empower the commission to allow a rate that would be confiscatory, the order on rehearing is unlawful and cannot stand, and the rates as they now exist would amount to confiscation.

The latter position seems to me to be the only sound course to pursue since obviously a company cannot improve or expand its facilities without the expenditure of new capital and it certainly cannot secure new capital on any favorable basis unless its earnings are adequate.

Nor are the courts and commissions in entire accord as to a commission's right to inquire into the *reasonableness of operating expenses.* In the past it has been the generally accepted theory that such inquiry impinges on the prerogatives of management and this still seems to be the general rule as was recently pointed out by the Virginia Supreme Court of Appeals in the City of Norfolk et al. *v.* Chesapeake & Potomac Teleph. Co. of Virginia.[10] To the same effect was the decision of the South Dakota Supreme Court[11] where the court held that expenses attributable to intrastate operations of a telephone company may not be arbitrarily fixed by a state commission. On the other hand, in New Jersey the supreme court has held that a public utility in a rate proceeding must bear the burden not only of proving the amount of operating and other expenses but also the burden of proving the basis of charges to its expense accounts and the propriety of including such charges for rate-making purposes.[12]

In the field of rate making other questions that have been the subject of much attention involve the *propriety of pension costs, license fees paid to a parent company,* and *purchases from affiliated companies.* In this area, however, we find uniformity of opinion among the commissions and courts that pension costs as well as the cost of sickness and special relief payments and the costs associated with employees' welfare are proper operating expenses. Payments to a parent or affiliated company for license fees and similar services have also been generally allowed where the services have actually been rendered at a fair cost; and payments to affiliated manufacturing companies have been approved where the supplies have been furnished at reasonable prices and on as favorable terms as could be secured elsewhere.

But when we come to questions involving the *propriety of territorial division agreements,* the *proper amount to be allowed for working capital,* and the *treatment of depreciation,* we again enter the field of nonuniformity. Missouri has

[10] (1951) 89 PUR NS 33, 64 SE2d 772.

[11] *Re* Northwestern Bell Teleph. Co. (1950) 85 PUR NS 368, 43 NW2d 553.

[12] *Re* Public Service Co-ordinated Transport (1950) 5 NJ 196, 86 PUR NS 161, 74 A2d 580.

held in the case of Old Rock Distilling Co. *v.* Southwestern Bell Teleph. Co.[13] that such territorial agreements were not binding and other commissions have held likewise; however, the supreme court of Ohio but recently affirmed the decision of the public utilities commission of Ohio sustaining territorial boundary lines between telephone exchanges which had been approved by the commission.[14] Nor has there been any consistency in the amount that will be allowed for working capital. Such allowances have varied from nothing[15] to one month's allowable operating expenses adjusted for taxes, depreciation, and prepayments.[16]

In the field of *judicial review of commission orders,* we find a few cases of real interest. In *Re* Northwestern Bell Teleph. Co.[17] and New England Teleph. & Teleg. Co. *v.* Department of Public Utilities,[18] it was held that judicial review of a rate order is broader when confiscation is claimed and that in such cases due process then requires judicial determination of both law and fact, and the New Jersey Supreme Court has held that where the reasonableness of fixed rates is challenged and subjected to judicial review the court is required to consider the evidence and resolve for itself the issue of reasonableness.[19]

These decisions are of interest since for a number of years the judicial trend has been to accept without very much question the findings of the regulatory agency as to facts.

The past year has been an interesting one in the communications field of public utilities and in that field, as in others, the law continues to grow and develop.

[13] (1950) 85 PUR NS 65.

[14] Vandemark *v.* Public Utilities Commission of Ohio, 98 NE2d 804, 155 OSt 303; April 25, 1951.

[15] *Re* Southern Bell Teleph. & Teleg. Co. (Ky) 88 PUR NS 1.

[16] PUC *v.* Pennsylvania Teleph. Corp. 86 PUR NS 292; Columbus *v.* Public Utilities Commission of Ohio, 154 OSt 107.

[17] (1950) 85 PUR NS 368, 43 NW2d 553 (South Dakota Supreme Court).

[18] (1951) 88 PUR NS 73, 97 NE2d 509 (Massachusetts Supreme Judicial Court).

[19] Central R. Co. of New Jersey *v.* Department of Public Utilities (New Jersey Supreme Court) 81 A2d 162.

Railroad and Carrier Cases

By EDGAR S. IDOL*

THERE is such a wealth of material in the report of your Standing Committee on developments during the past year in the field of public utility law, that I have found it difficult to select the most interesting topics for discussion. However, since the keynote of this session is a study of inflation, and since the task of securing rate increases to keep abreast of inflation occupies so much of our time, I should like to discuss recent developments in that field.

Rates and Costs

The problem of the attorney presenting a rate case for a motor carrier differs in one very important respect from the presentation of a rate case for any other public utility. As Chairman Nichols points out in his summary, the usual and time-honored method of fixing rates involves determination of a rate base and application of a percentage return thereto, despite the Supreme Court decision that the commissions have wide discretion in fixing rates so long as they reach a reasonable "end result." Most of our rate cases today stem directly from inflation, and all public utilities, including motor carriers, have the task of establishing by factual evidence the amounts by which their rates must be increased in order to offset their increased costs. But when we come to the question of determining how much profit may properly

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be claimed and allowed, the motor carrier's case diverges sharply from that of all other utilities. We can't follow the usual method because a 6, 7, or 8 per cent on investment is wholly inadequate.

THE return on investment theory may be all right as applied to a public utility enjoying a complete monopoly in its field, although to me it seems complicated, cumbersome, and expensive in application. Also, I sometimes wonder why a business which is permitted a return of less than 10 per cent on its equity capital can have any interest for its owners, when for over a decade those limited profits have been more than absorbed by inflation. My hat is off to the investment bankers who are able to find capital for such enterprises, in competition with the financial needs of unregulated industries able to earn two or three times the return allowed to regulated utilities.

The basic reason why the "return on investment" theory is not a proper yardstick for regulating motor carrier rates is that there is no necessary relationship between investment and volume of business. For most utilities, the ratio of gross plant to annual revenue is around three or four to one, but the annual revenues of a motor carrier may be anywhere from two to ten or fifteen times his gross investment in plant. Up until 1949, the average investment of class I motor carriers of property was approximately one-third of his annual revenue; but the ratio has been increasing steadily in the past two years, and is now close to five to one.

Thus, a 10 per cent return on investment would mean an operating ratio of 98 per cent for a motor carrier, a margin entirely too close for any businessman even under normal and stable conditions, and completely out of the question during inflationary periods.

I WON'T take the time to present more detailed argument on the reasons why operating ratio must be substituted for the return on investment theory in rate making for motor carriers. Mr. Robert Driscoll, general counsel for the Greyhound Corporation, has written an excellent treatise on the subject and I am sure he would be happy to make it available to any of you who are particularly interested.

For some time, the Interstate Commerce Commission has recognized the necessity of using operating ratio as the proper measure of return in making motor carrier rates.

In Middlewest General Increases, reported at 48 MCC 541, the commission said:

> The owners of motor carriers can hardly be expected to look to the return on the amount of their investment as an incentive, for the principal risk is attached to the substantially greater amount of expense. . . . For the purpose of determining the need of increases in rates, the criterion must be the carrier's cost.

A number of state commissions have followed the same reasoning, and your Standing Committee's report refers to a current decision which I like very much. *Re* Southern New England Teleph. Co. (Connecticut), Docket No. 8458, decided June 6, 1951, is briefed at page 75 of your committee's report. The telephone company, while reserving its right to seek a fair return on a fair rate base at a later time, limited its request in the instant proceeding to what the commission called "the minimum net utility operating income sufficient to enable it to fulfill its corporate purposes, and to meet its obligations to its subscribers and investors."

To my mind, the test of reasonableness set up by the quoted language would be hard to improve upon. It could be applied with equal justice to any form of regulated public utility. It would, very possibly, be a good method of avoiding complicated and prolonged argument on such questions as are involved in the issue of original cost *versus* replacement cost.

I SUBMIT to you, gentlemen, that far too many rate cases have been decided on what are really subsidiary

issues, with the result that the real purposes and objectives of governmental regulation are entirely forgotten. Let's get away from the individual trees for a moment and look at the forest as a whole. Almost every regulatory act, both state and Federal, contains a fairly sound statement of policy. In general, the policy of government regulation is to see that public utilities are established and maintained on an economically sound basis, and that they are adequate under private ownership and management to provide efficient and economical service to meet the needs of the public, both in peacetime and in times of national emergency. Any regulatory policy or practice which does not serve to accomplish these ends cannot be justified.

But a review of the decisions brought to your attention by the Standing Committee for the past year, indicates that, in many cases, the whole decision turns on the ratio of equity capital to borrowed capital, the cost of each, and the precise minimum return which the regulatory commission felt could be earned by the utility, without substantial impairment of service.

Fifteen cases were briefed by your committee under the heading "Return of Particular Utilities," beginning at page 79 of the report. In almost every case, it seems to me the commissions and the courts give their whole attention to determining how low rates could be kept without destroying or impairing service. In none of the cases reported have I found any discussion of the fact that the value of a utility's assets, as measured in dollars, must be allowed to increase by from 8 to 10 per cent every year just in order to keep abreast of inflation. I do not mean to infer that this issue has not been presented to the regulatory authorities. But, if presented, it has either been ignored or turned down.

IN one of the most important revenue cases of the current year, Ex Parte No. 175, the railroad application for a 15 per cent increase in freight rates, the revenue needs of the railroads were described as follows:

425 millions to meet fixed and contingent charges;
475 millions for 6 per cent dividends on common stock;
1,500 millions for capital improvement.

Stated in another way, the railroads sought enough income to pay charges on their fixed debt, to provide 6 per cent dividends on their common stock, and to improve their properties at the annual rate of about 6 per cent of valuation.

Such a request seems to me wholly reasonable. It's too modest, if anything. And it was skillfully presented, and fully supported by an imposing array of witnesses and exhibits. But it was attacked, of course, from every side, and the commission "was not convinced" or "was in doubt" as to the accuracy of petitioners' estimates and forecasts.

So as usual, the ICC gave the railroads only about 40 per cent of what they asked for. In commenting on the need of the carriers for capital improvements, it said:

> We are not convinced that money necessary for capital additions to the railway systems should be derived wholly from income, but we must take note of the fact that many of these outlays are being made under the encouragement, if not the insistence, of the government and the shipping public, with national defense primarily in mind. Such circumstances, therefore, bear upon our decision in this case.

IN general, other utilities seem to do better under regulation by state and local commissions than carriers do under regulation by the ICC. Their profits are relatively stable, and are stabilized at higher levels than the railroads are allowed to earn. Perhaps the return on investment theory is still their best bet. But for carriers, I hope the time will come when carrier management will have the right to exercise its own judgment as to how much and when its revenues must be increased to keep pace with a marching inflation.

It may be necessary to write a proper

theory into the law, eventually, in order to remove the hampering effects of precedent before the commissions generally recognize that motor carrier rates should be measured by the relation of expense to revenue. This has been done this year in two cases. The regulatory acts of Washington and New Jersey were amended by authorizing the commissions to give consideration to the relation of carrier expenses to carrier revenues as the proper test of a reasonable profit; in New Jersey the public utility commissioners were authorized to fix passenger fares (by autobus) at levels which would afford operating ratios of between 85 and 90 per cent.

Procedure

THE case of Riss & Co. *v.* United States, briefed at page 24 of the committee's report, has been of unusual interest in the motor carrier field. This is so principally because the *per curiam* order reversing the judgment of the district court creates more issues than it decides.

Sections 5, 7, and 8 of the Administrative Procedure Act, enacted in 1947, required administrative agencies to use examiners qualified under that act to conduct certain hearings, unless members of the agency itself preside at the hearings. The language of the act was initially construed by the ICC as not being applicable to proceedings under the Interstate Commerce Act, except where a hearing was mandatory under the statute.

Part II of the Interstate Commerce Act does not specifically require a hearing in connection with applications by motor carriers for certificates or permits. Riss & Co. filed such an application, and in the normal course of events it was set for hearing before a staff examiner. A witness for the commission's Bureau of Motor Carriers appeared at the hearing and testified in opposition to the granting of the certificate. Counsel for Riss objected to the absence of a qualified hearing examiner, and later appealed the commission's unfavorable decision on its application.

The statutory 3-judge court upheld the commission's interpretation of the law, but the Supreme Court reversed *per curiam*, merely citing Wong Yang Sung *v.* McGrath, 339 US 33.

In the Wong Case, the facts were similar. A hearing was held before a staff examiner of the Naturalization Service, and the petition for citizenship was opposed by another staff representative of the same department. The holding of the Supreme Court was clear; the basic intent of Congress in enacting the Administrative Procedure Act was to prevent a single government agency from acting as both prosecutor and judge in any proceeding.

THE issues created, but not decided by the Supreme Court's opinion, result from the fact that the commission has heard more than 3,000 application cases since the effective date of the Administrative Procedure Act, most of which are not on all fours with the Riss Case. In only 35 out of all of those cases were objections made to the absence of a qualified hearing examiner, and in very few cases did the commission representatives take part in the proceedings.

So two major issues are raised by the decision; first, did the Administrative Procedure Act remove the authority of the commission to refer *any* case to a staff examiner, with the result that any hearing so held was null and void? And, in consequence, are all orders granting certificates and permits in such proceedings void and of no effect?

Most lawyers who have studied the matter feel that any error committed in such cases was procedural rather than jurisdictional, and that, in the absence of objection, the hearings in subsequent orders are valid. Nevertheless, a goodly number of petitions for rehearing have been filed by disappointed litigants who now contend that they are entitled to a new hearing before a qualified examiner under the Riss decision.

The second issue is raised by the fact that in most cases commission representatives did not participate in the hearings, and the prosecutor-judge angle was

missing. Had Riss' application not been opposed by an ICC staff representative, many lawyers feel that the hearing before a staff examiner would have been approved by the court. But no one can be sure of the answer at present.

At least one case involving these issues has since been taken to court. But it is probable that these issues will be eliminated before they reach the Supreme Court by enactment of a bill now before Congress, which will have the effect of validating all commission orders in cases where no objection was made to procedure before staff examiners.

Railroad Control of Motor Operations

Two decisions of very considerable interest to carriers generally were handed down by the Supreme Court on February 26th of this year. In U. S. and ICC *v.* Texas & Pacific Motor Transport Co. and U. S. and ICC *v.* Rock Island Motor Transit Co., the Court upheld very broad interpretations of the commission's authority to restrict and narrow certificates held by railroad subsidiaries authorizing motor carrier service.

Section 5 of the Interstate Commerce Act forbids the acquisition of motor carrier certificates by a railroad except to enable it "to use service by motor vehicle to public advantage in its operations." Ever since the enactment of the Motor Carrier Act in 1935, the commission has read into § 207, authorizing the issuance of certificates, the same requirement. In general, the commission has authorized acquisition of certificates or original issuance thereof to railroads or rail-controlled subsidiaries only under express conditions designed to limit service to that which is auxiliary to or supplemental of rail service. In both of the cases noted, the railroads involved had from time to time purchased or acquired by application several different certificates authorizing the performance of motor carrier service. In both cases, the several separate authorities became the basis of authority for through operations by motor vehicle having no particular connection with rail service, which were performed in direct competition with other motor carriers. In the Texas and Pacific cases, the commission had in every instance imposed certain restrictions and had further reserved the right to impose further restrictions in order to confine the company's operation to service auxiliary to or supplemental of rail service. In the Rock Island cases, no such supplementary reservation was noted.

In both cases, the commission subsequently entered upon general investigations to determine whether or not further conditions should be imposed to make certain that the highway operations of the railroads were in fact limited to services auxiliary to or supplemental of rail service.

At the conclusion of these proceedings, orders were issued in both cases imposing specific restrictions upon the service which might be performed under the outstanding certificates. These restrictions had the effect of prohibiting generally all motor operations on the billings of the rail subsidiaries, or under motor rates, either joint or local. They further prohibited through motor transportation of traffic between key points on the railroads' lines.

The decisions were appealed to 3-judge district courts, and the commission was reversed in both instances. But on appeal by the government to the Supreme Court, both the district court decisions were reversed and the commission sustained.

These decisions mark the end of some fifteen years of bitterly contested litigation before the commission and in the courts on the question of integrated ownership and control of motor and rail operations. This does not necessarily mean, of course, that our railroad friends will give up the battle. It simply means that they must devote their attention now to changing the law, and they have not been inactive in that respect.

APPENDIX

Developments in Electric and Gas Law during the Year

By BRADFORD ROSS*

LIMITATIONS of time permit only a brief review of some of the most important cases in this field. Broad coverage of the subject is to be found in the splendid report of the Standing Committee presented by Mr. Nichols.

I shall first refer to cases and developments regarding gas.

The Supreme Court sustained orders of the Oklahoma commission fixing a minimum wellhead price in the Guymon-Hugoton field in Oklahoma and directing Cities Service to take gas ratably from Peerless at the minimum price fixed.[1]

This was the first decision of the Supreme Court holding that the state may fix a minimum price for gas as a reasonable conservation regulation. The Court pointed out that no question of conflict with Federal Power Commission regulation under the Natural Gas Act was presented to the Court.

The Supreme Court also sustained an order of the Michigan commission requiring a "natural gas company," subject to regulation by the Federal Power Commission under the Natural Gas Act, to obtain a certificate of public convenience and necessity before selling natural gas direct to industrial consumers in the local distribution area served by Michigan Consolidated.[2] It held that such sales, though in interstate commerce, were left to state regulation when the Natural Gas Act was passed and are of "essentially local" concern. This decision is consistent with the earlier decision of the Court in the Indiana Case holding that rates for direct sales are subject to state regulation.[3]

THE United States Court of Appeals for the District of Columbia Circuit sustained a Federal Power Commission order granting a certificate of public convenience and necessity to the East Tennessee Natural Gas Company for service to the Atomic Energy Commission at Oak Ridge, rejecting the contentions of the coal and railroad interests that the commission must consider as *separate* and *independent elements* in such cases, the effect of the certificate upon competing interests, and the relation of the project to the conservation of natural gas.[4] However, the Court rejected the commission's vigorous assertion that injury to the mine owners, miners, railroads, and railroad employees was too remote and conjectural to qualify them as parties aggrieved. In this connection, the Court also rejected the argument that the petitioners had not proved allegations that their members would be affected by the issuance of a certificate. Thus, it seems to me that the Court is relieving interveners of the burden of proving the allegations in their petitions to intervene before the commission and placing upon the commission the burden of disproving such allegations. Certiorari was not sought.

ANOTHER decision of the court of appeals for the District of Columbia circuit[5] is of interest as involving a successful appeal by a consumer from a District of Columbia Public Utilities Commission order allowing a gas rate in-

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[1] Cities Service Gas Co. *v.* Peerless Oil & Gas Co. (1950) 340 US 179, 87 PUR NS 41; Phillips Petroleum Co. *v.* State of Oklahoma et al. (1950) 340 US 190, 87 PUR NS 48.

[2] Panhandle Eastern Pipe Line Co. *v.* Michigan Pub. Service Commission and Michigan Consolidated Gas Co. (1951) 341 US 329, 89 PUR NS 1.

[3] Panhandle Eastern Pipe Line Co. *v.* Public Service Commission of Indiana et al. (1947) 332 US 507, 71 PUR NS 97.

[4] National Coal Ass'n. et al. *v.* Federal Power Commission, No. 10,376, decided June 18, 1951.

[5] Washington Gas Light Co. *v.* Baker (1950) 188 F2d 11, 89 PUR NS 177, certiorari denied, 340 US 952.

crease. The court set aside the commission's use of a rate of return, which the commission had found to be reasonable in a previous proceeding, for want of findings in the instant proceeding as to the reasonableness of that rate of return and for want of current evidentiary support for it.

More important is the court's treatment of the commission's inclusion in the rate base of the remaining net book cost of certain artificial gas facilities which had been abandoned when the company had switched to natural gas a few years previously. The court makes plain that the "used and useful" concept as applied under the "reproduction cost new" theory of rate making is not an adequate guide to decision of the question of inclusion of abandoned property in the rate base under the "prudent investment" method. Instead, the court suggests the proper criterion is whether the loss was either one of the risks covered by the allowance for depreciation, or a loss for which the investor had been compensated in the rate of return previously allowed.

I believe this decision may be one of the landmark decisions in the law of public utility regulation.

SEVERAL decisions of the Federal Power Commission which have not yet been passed on by the courts should be noted.

The commission held that a certificate of public convenience and necessity is *not* required for the transportation of gas solely for use by the transporter as fuel in its generation of electric energy.[6]

Just recently, the commission issued its opinion and order in the well-known "Phillips Case," in which it held transportation and sale in interstate commerce made in the course of production and gathering are exempt from commission jurisdiction.[7] Three commissioners based their decision upon, first, the statutory exemption of production and gathering, and second, the fact that Federal regulation would result in conflict with state regulation under the language of the Interstate Natural Gas Company Case, decided by the Supreme Court in 1947.[8] A fourth commissioner subscribed to the decision only on the second ground. The fifth, Commissioner Buchanan, filed a vigorous dissent. It is anticipated that the case will ultimately go to the Supreme Court.

Any review of recent legal developments regarding the natural gas business should include the Petroleum Administration for Defense. This agency is responsible for making recommendations to the Defense Production Administration for allotments of steel for the construction of natural gas pipelines and giving priorities for such steel allotted. It also has certain authority to allocate natural gas where necessary in the interests of national defense. Under this latter authority, it has issued regulations limiting, without its special approval, extension of natural gas service to new, large-volume consumers and to any central space-heating customers, in fifteen eastern states and the District of Columbia. An amendment to the Defense Production Act renders this order inapplicable in any state which certifies to the President that it is exercising authority to restrict the use of natural gas consistent with the objectives of the act.

FOUR important decisions have been rendered affecting interstate electric utilities.

One was the Supreme Court decision in Montana-Dakota Utilities Co. *v.* Northwestern Public Service Co.,[9] where the Court unanimously held that rates on file with the Federal Power Commission are the only rates enforceable in the courts and there can be no right to recover on the basis of some other rate which a court may deem proper under

[6] *Re* Montana Power Co. Docket No. G-1627 (1951) 88 PUR NS 97.

[7] FPC Opinion No. 217, issued August 22, 1951.

[8] Interstate Nat. Gas Co., Inc. *v.* Federal Power Commission et al. (1947) 331 US 882, 69 PUR NS 1.

[9] (1951) 341 US 246, 88 PUR NS 129, affirming 169 F2d 392 (CA 8, 1948).

the "just and reasonable" standard of the act.

Another important decision was that of the court of appeals for the District of Columbia circuit affirming a Federal Power Commission order requiring Arkansas Power & Light Company to make the accounting adjustments prescribed by the Federal commission *in its general corporate accounts*.[10] The company had contended that the Federal commission could at most require such entries to be made in a second set of accounts kept solely for that purpose, when a state commission had imposed conflicting requirements.

A third decision was that of the court of appeals for the fourth circuit[11] declaring illegal, under the antitrust laws and the public utility laws of Pennsylvania, a power contract between Pennsylvania Water & Power Company and Consolidated Gas, Electric Light & Power Company of Baltimore. That contract was a somewhat unusual one in that it provided for the sale to Baltimore Company of the *total output* of Penn Water's power and energy (after certain sales at specified rates to three Pennsylvania outlets) and provided for payment therefor by Baltimore Company, regardless of the amount of power and energy it received, of such dollar amount as would provide Penn Water with a specified annual return on its net investment after payment of all operating expenses, depreciation, and taxes.

THE fourth circuit found the contract illegal because of provisions which prevented Penn Water from making substantial changes in the plant account and from diverting energy from Baltimore Company to other companies. It regarded these provisions as unlawful *per se* because they restricted Penn Water from making any plant expansion or sale of power to any other customer without the consent of Baltimore Company. It treated them as an attempted restraint on Penn Water's freedom to propose new services and rates, and hence, like the railroad rate bureau agreements involved in Georgia *v.* Pennsylvania R. Co.,[12] not within the scope of commission regulation of services and rates. The court quoted language used by the Federal Power Commission which indicated that in fixing the rates, it was not prescribing as part of its rate regulation the contract provisions which might be illegal under the antitrust laws.

Another important decision was that of the court of appeals for the District of Columbia circuit affirming the Federal Power Commission's reduction in Pennsylvania Water & Power Company's rates,[13] including those charged for the services rendered under the contract which had been held illegal by the fourth circuit. The court upheld commission jurisdiction, including jurisdiction over Penn Water's sales as sales of the output of an interstate pool, notwithstanding Penn Water's claim that the actual number of out-of-state kilowatt hours included in Penn Water's sales in Pennsylvania to other utilities in Pennsylvania was negligible. On the merits of the rate reduction, the court sustained the commission on all points.

THE court denied Penn Water's motion to annul the commission's rate order on the ground that the fourth circuit decision had destroyed the basis of the order, holding that FPC's regulation of *rates* was not affected by the fourth circuit's decision under the antitrust laws.[14] The opinion recognizes that antitrust law considerations may be *components* of the public interest guiding commission exercise of regulatory authority, but points out that arrangements which

[10] Arkansas Power & Light Co. *v.* Federal Power Commission, 185 F2d 751, 88 PUR NS 252 (Miller, J., dissenting), certiorari denied (1951) 341 US 909.

[11] Pennsylvania Water & Power Co. et al. *v.* Consolidated Gas, E. L. & Power Co. of Baltimore et al. (1950) 184 F2d 552, 86 PUR NS 33, certiorari denied, 340 US 906.

[12] 324 US at pages 459-462.

[13] Pennsylvania Water & Power Co. et al. *v.* Federal Power Commission, Nos. 10236, 10239, and 10531 (USCA [DC]), decided July 3, 1951.

[14] See note 13, *supra*.

would otherwise be illegal under the antitrust laws may be permitted or required under a regulatory statute like the Federal Power Act and shorn of their illegality, to that extent. The court holds that the fourth circuit's decision had not relieved Penn Water of its obligation under the Federal Power Act to continue the then-existing services and rates (which were the subject of the commission's order) until and unless changed in compliance with, and subject to the terms of, the Federal Power Act.

SEVERAL cases were decided by the courts which involved licenses to occupy government lands or streams subject to Federal control.

The United States Court of Appeals for the District of Columbia Circuit held that Federal Power Commission licenses are required for nine hydroelectric developments on the upper Missouri river belonging to Montana Power Company.[15] This decision held the Missouri river to be navigable to its headwaters, even though such navigability was interrupted for approximately 17 miles by the Great Falls of the Missouri, and although the Fort Peck dam now forecloses through navigation. Certiorari was denied.

The same court held that the Federal Power Commission has *no* authority to require wheeling of public power as a condition to a license for a transmission line crossing Federal lands.[16] The condition was attached at the request of the Secretary of the Interior in order to provide an outlet for power from Federal projects in the vicinity, and required the licensee to agree to increase the capacity of its lines at government request *and expense* and to transmit government energy unless and until thirty months' notice is given that the utility requires the full capacity of the line. Time for petition for certiorari has not expired.

Another decision by the same court sustained the Federal Power Commission's *disclaimer* of jurisdiction over a transmission line, connected with a licensed project, which crossed government lands but which was not a "primary" line or a part of the "project works" of the licensed project as those terms are defined in the Federal Power Act.[17]

The result of this decision is that permission by other government agencies is required for such lines rather than permission of the Federal Power Commission.

THE commission's decision issuing a license to the Virginia Electric & Power Company over the objection of the Secretary of the Interior is of considerable interest.[18] This decision is on review in the fourth circuit court of appeals on the petition of the Secretary. Two basic questions are involved: (1) whether the Secretary of the Interior is a "party aggrieved" or has standing to obtain review in the name of the United States where he was an intervener before the commission, and (2) whether the Flood Control Act of 1944, approving a comprehensive plan for development of the Roanoke river, withdrew from the commission, authority to license a project which was included in that plan. This case has been argued and is awaiting decision.

There is also pending in the court of appeals for the District of Columbia circuit review of an order of the Federal Power Commission denying application for a license by the New York Power Authority to construct a hydroelectric project in the International Rapids section of the St. Lawrence.[19] This denial of license is noteworthy since it is the first case in which the commission has determined that a project for which license

[15] Montana Power Co. *v.* Federal Power Commission (1950) 185 F2d 491, 85 PUR NS 161.

[16] Idaho Power Co. *v.* Federal Power Commission (1951) 89 PUR NS 87.

[17] Pacific Power & Light Co. *v.* Federal Power Commission (1950) 184 F2d 272, 87 PUR NS 277.

[18] *Re* Virginia Electric & Power Co. (1951) 87 PUR NS 469.

[19] *Re* Power Authority of the State of New York (1950) 87 PUR NS 65.

is sought should be undertaken by the United States. The commission held that simultaneous construction of both the power and navigation facilities by the United States, as planned by the Army Engineers, would be best adapted to a comprehensive plan for development of the water resources and so recommended to Congress.

SPEAKING more generally, I believe the most important developments regarding the natural gas industry are the large number of applications by natural gas companies for rate increases, and the large number of applications for certificates of public convenience and necessity to construct additional facilities for the interstate service and supply of natural gas.

The rate increases requested are based generally on the higher cost of gas to pipeline companies and the increase in cost of construction. At the present time, such applications before the Federal Power Commission request a total annual increase amounting to almost $90,000,000. This trend is, of course, of great importance not only to the companies involved, but to the Federal and state commissions *and the consumers.* Proposed increases in rates to some of these companies have had or will have a chain effect—resulting in more applications for increases by purchasing pipelines and local distributing companies.

The increase in applications for certificates may possibly be due to the desire of natural gas companies to get ahead with plans for expansion as rapidly as possible in the hope that they will be in a better position to obtain an allocation of steel for construction. Whatever the cause, 28 per cent more certificate applications have been filed thus far this year than were filed in the corresponding period last year.

In the electric field, expansion is continuing at a fast pace and this is reflected in the work load of the Federal Power Commission. For example, as of June 30, 1951, there were pending before the commission applications involving proposed hydroelectric generating facilities totaling approximately 45,000,000 kilowatts of capacity, or nearly as much as has been licensed by the commission in its entire thirty-one years of existence.

State Legislation Affecting Utilities

By JERROLD SEYMANN*

I AM going to try, within the short space of time allotted to me, to briefly outline the legislative accomplishments in the field of utility law during the past year. First, in the Federal field.

There are a few laws which will be of interest to utility lawyers. As you all probably know, there was a Defense Production Act of 1950, Public Law 774 of the 81st Congress, which was approved September 8, 1950, just about a year ago. This act, which set up the priorities and allocation system and wage and price control, exempted rates charged by any common carrier or other public utility from the price controls in Title IV.

Although the Defense Production Act provides specific exemption for certain industries from price control, no specific exemption for such industries from the wage stabilization powers is provided in the law. In view of the fact that the exercise of price controls and wage stabilization were apparently intended by Congress to be exercised hand in hand, it has been argued in some quarters that wage stabilization powers do not exist with respect to the price-exempt industries. The Wage Stabilization Board, however, has taken the position that its regulations and orders stabilizing wages apply to all industries generally, including the price-exempt ones. The board, however, has set up a tripartite panel to

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make recommendations on the extent to which wage stabilization controls should be continued applicable to the price-exempt industries.

THIS panel, after extensive hearings, made a report, which report was not unanimous. On the question of the power to stabilize wages in the price-exempt industries, the union members of the panel denied its existence while the public and industry members, although arguing that the power existed, admitted that there was sufficient doubt on the question as to warrant the board seeking an opinion from the Attorney General. The recommendations of the panel have not been acted upon by the board as yet.

The Defense Production Act was amended by Public Law 96 of the 82nd Congress, approved July 31, 1951, and although there was some talk in Congress of changing the exemption for utilities, when the law was finally passed the original section was left unchanged. However, a new provision was added to § 704 of the Defense Production Act, which provides that no rule or order under the act which restricts the use of natural gas shall apply in any state in which a public regulatory body has authority to restrict such use and certifies to the President that it is exercising that authority.

Another law of importance to public utility lawyers is the Excess Profits Tax Act of 1950, Public Law 909, 81st Congress, approved January 3, 1951, which contains a provision giving special treatment to utilities. Section 448 of this act provides for special credit to be given to regulated public utilities before applying the excess profits tax.

THE 81st Congress made a change in the law relating to review of orders of the FCC under the Communications Act. Public Law 901, 81st Congress, approved December 9, 1950, provides that the court of appeals shall have exclusive jurisdiction with regard to final orders of the FCC made reviewable in accordance with § 402(a) of the Communications Act. It sets up the procedure for such review. The court of appeals' action is reviewable on writ of certiorari to the Supreme Court. Previously the commission's orders were reviewable by a special statutory 3-judge court and appeal to the Supreme Court was a matter of right.

Public Law 9, passed by the 82nd Congress and approved March 23rd, is the Renegotiation Act of 1951. It contains a mandatory exemption for any contract or subcontract with a common carrier for transportation or with a public utility for gas, electric energy, water, communications, or transportation when made at rates not in excess of published rates or charges regulated by a public regulatory body, or rates not in excess of unregulated rates of such a utility which are substantially as favorable to users and consumers as are regulated rates.

One other law of general interest to all lawyers, as well as utility lawyers, is the passage by Congress of the Preston Bill, Public Law 129, 82nd Congress, approved August 28th. This law adds a new provision to the judiciary code to provide that any business institution, member of a profession, or a department or agency of the government may reproduce by photograph, photostat, or microfilm, or other process, records kept in the regular course of business and such reproduction is as admissible in evidence as the original in any judicial or administrative proceeding whether the original is in existence or not.

NOW as to the state legislation. During the year 1951, forty-four state legislatures met in regular session.

Three states set up interim committees to study and investigate the operation of utility laws and report recommendations at the next sessions of the legislature. These were California, Illinois, and Michigan.

Probably the most extensive change in a regulatory commission law was the revision of the *New Hampshire* statute. The name of the commission was changed from the public service commission to

the public utilities commission. The revision consisted of a number of amendments to the existing law for the purpose of modernizing the statutory provisions which had been first enacted in 1911.

One of the material changes affects the filing of rate schedules. The new law provides that the maximum period of suspension shall be twelve months instead of six months as heretofore, with the provision that if the commission has not made its decision prior to the expiration of six months from the original date, the utility may put the rates into effect under bond pending expiration of such twelve months' suspension period. Another rate revision has also been added to provide temporary increased rates to be made effective under a requirement bond.

A third material change was making electric co-ops subject to the jurisdiction of the commission, whereas under the old law they had been specifically exempted.

THE only other complete revision of a utility code was that made by the *California* legislature. Here a complete code was passed. This code is a consolidation and revision of all existing laws which relate to and regulate public utilities and other regulated businesses.

The *Arkansas* legislature passed a law requiring water, gas, and electric utilities to render statements to their customers in accordance with rate schedules filed with the public service commission and upon request of the customers to furnish a copy of the rate schedule under which such customer is billed. This law repealed a former statute which had required such utilities to furnish meters on demand and to bill customers semi-annually.

In *Delaware* the legislature amended the Public Service Commission Law relating to powers of the commission in employment of personnel; investigations and inquiries held before members of the commission or designated examiners; joint investigation with regulatory bodies of other states or the Federal government. The definition of "railroad utilities" was enlarged to include all railroads and not only steam railroads. Other amendments relate to filing of annual reports, "insurance requirements of motor carriers," statements of account and records to be kept, powers to fix rates or depreciation and regulate depreciation accounts, inspection and examination of books, accounts, records, and facilities of public utilities. A new provision is added providing for temporary rates pending a rate reduction proceeding. If the permanent rate as finally determined is in excess of the prescribed temporary rate the utility will be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined, the difference between the operating revenues obtained from the prescribed temporary rate and the operating revenues which would have been obtained under the final rate if applied during the period the temporary order was in effect.

AN amendment to the General Corporation Law made by the *Connecticut* legislature provides that the provisions concerning the increase or reduction of authorized capital stock by public service companies shall in no way affect the authority of the public utilities commission with respect to the issuance of such securities.

A resolution was passed by the *Colorado* legislature providing for the submission of a constitutional amendment to the voters at the next general election. This amendment would provide that the general assembly shall have power to regulate rates charged by public utility companies, exclusive of municipally owned utilities, and shall have authority to vest such rate-making power in a state agency designated by the general assembly. If adopted, this would in effect eliminate the power of individual cities to control rates of public utilities.

A law passed by this legislature is known as the Oil and Gas Conservation Act. It creates the Oil and Gas Conservation Commission in the Division of Conservation as successor to the Gas Conservation Commission previously in

existence. It repeals the law creating the Gas Conservation Commission and prescribes the jurisdiction and regulatory authority of the new commission over gas and oil companies and properties within the state.

THE *Florida* legislature passed a law providing for the regulation, control, and supervision of privately owned electric or gas utilities by the railroad and public utilities commission. I believe this has been referred to in the report of the Standing Committee.

The *Idaho* legislature passed a law changing the name of the public utilities commission of the state of Idaho to the "Idaho Public Utilities Commission." This was a "ripper" bill, the purpose of which was to create a new commission. The method of appointing new commissioners and filling vacancies on the commission was changed slightly and the term of office was cut down from six to four years.

Another law passed by the Idaho legislature provides for the supervision and regulation of all motor carriers engaged in transportation of passengers or property within the state and places them under the jurisdiction of the public utilities commission.

This legislature also passed a bill subjecting the right of every electric or gas utility to issue, assume, or guarantee securities and to issue mortgages and deeds of trusts or other evidences of security with respect to property situated within the state to the regulation and supervision of the public utilities commission where such securities, pledges, or liens are payable at periods of more than twelve months after date thereof.

IN *Indiana* an amendment to the commission law provides that when any public utility files a complaint or petition concerning a rate increase it shall publish a notice of the filing in a newspaper published in the city or town in which the utility renders service, or if no newspaper is published in such city or town then in a newspaper of general circulation within which such city or town is located.

An amendment to the utility laws in *Massachusetts* gives the department of public utilities power to adopt procedural rules after public hearing and subject to the governor and council.

In *Michigan* two bills were passed amending the utilities law. The first decreases from three to two members the number required to constitute a quorum and the second decreases the total number of commissioners from five to three. The term of office is increased from five to six years. A third law passed by the Michigan legislature relating to telephone companies, provides that upon a trial of issues raised at a hearing before a court on review of an order any evidence offered by *either party* different from that offered upon the hearing shall be transmitted to the commission for its consideration and a possible modification of the decision of its orders or regulations. The old law made such provision only in the case of new evidence entered by the *complainant*.

IN *Nebraska* a law amends the commission laws to provide that motor carrier service under a certificate of public convenience and necessity, or a permit, shall not be suspended without prior approval of the state railway commission. Exception is made in the case of strikes, embargoes, and catastrophes and other circumstances beyond the control of a motor carrier. The amendment contains other changes relating to consolidation or merger of certificates, transfers, or assignment or sale of stock or change in stock ownership of motor carrier corporations and approval of leases.

In *North Dakota* the legislature passed a resolution requesting the public service commission to investigate complaints regarding withholding or threatening to withhold service or unreasonable delay in furnishing service for electric or gas appliances purchased by patrons from dealers other than utility companies. The resolution provided that the commission shall further investigate all complaints

regarding any preference given by utility companies in furnishing service to patrons for appliances purchased from utility companies to the discrimination of patrons who buy appliances from other dealers. If warranted by the facts the commission is then requested to enforce the existing utility laws against discrimination and preference.

THE *Texas* legislature passed a law creating a separate division of the railroad commission, known as the liquefied petroleum gas division, to administer the laws pertaining to liquefied gas operations within the state.

In *Vermont* in 1949 the laws were amended so that the commission could suspend the effective date of a filed rate schedule, but if a decision was not made by the end of six months the utility is permitted to place the filed rates in effect under bond. The 1951 legislature further amended the law so that if the utility did not make the filed rate effective under bond and the rates as finally determined are higher than those in effect, then the utility is permitted to amortize and recover by means of a temporary surcharge the difference between the *net operating earnings* obtained from the rates in force at the time the rate schedules were filed and the time when the rates finally determined are made effective.

Another law passed by the Vermont legislature designates the public service commission as a planning agency for the purpose of obtaining for all communities within the state proper utility service at a minimum cost and under economical management.

A third law passed by the Vermont legislature authorizes the public service commission to represent the state before the Federal Power Commission in all matters relating to the transmission and distribution of natural gas into the state. It also gives the commission jurisdiction to fix rates and determine minimum standards of service in the event natural gas is piped into the state.

The Vermont legislature in still another law imposes a special tax upon all utilities subject to the jurisdiction of the commission to finance the technical force of the public service commission. This tax is to be based on operating revenue during the year.

IN the state of *Washington* a law changes the maximum term of years of commissioners from four to six and increases their salaries. A procedure for removal of commissioners is added and a provision prohibiting commissioners from holding any official position or holding securities in any company subject to commission regulation is inserted.

The *Wyoming* legislature passed a law requiring common carriers for aircraft to submit to the public service commission a certificate showing compliance with all state and Federal safety regulations and the provisions of the uniform state law for aeronautics before said commission can issue a certificate of public convenience and necessity to such common carrier.

A NUMBER of other miscellaneous laws relating to utilities were passed. In Idaho, one prohibiting the acquisition by foreign corporations of property located in the state and used in the generation, transmission, distribution, or supply of electric power, and another, granting the right of eminent domain to pipeline corporations. In North Carolina, one granting eminent domain to gas companies. In Connecticut, a law authorizing gas companies to sell natural gas in the territories where they now sell manufactured gas. In Michigan, a law exempting radio broadcasting stations from liability for damages for inflammatory statements.

In Maine the legislature passed a law relating to a new subject. This law provides that corporations for the transmission of television signals by wire may be incorporated under the general corporation law provisions relating to the organization of communication companies and that such corporations may construct, maintain, and operate their lines along routes stated in the certificate of incorporation. The effect of this law is to al-

low such companies rights of way on highways.

A law of interest was passed in New York amending the penal law to make it a misdemeanor for anyone to jam the telephone lines of a business for the purpose of keeping busy the telephone lines in an effort to injure such business by preventing or delaying bona fide business calls.

IN 1950, laws authorizing the formation of co-operatives to extend telephone service to rural communities were enacted in several states, including Georgia, Kentucky, Texas, and Virginia. This year eight additional states passed laws covering the subject.

Arkansas passed a law providing for the formation of telephone co-operatives. This act makes the co-operatives subject to the jurisdiction of the state commission.

Indiana passed a law providing for the formation of rural telephone co-operatives subject to the commission's jurisdiction. A companion bill in Indiana provides for certificates of territorial authority to be issued by the public service commission defining the area or areas in which the telephone company shall render service.

Another law was passed in Indiana amending the Rural Electric Membership Corporation Act and providing that foreign electric co-operatives must file a petition for certificate of public convenience and necessity with the public service commission before it may do business in the state.

The *Kansas* legislature passed a law making telephone co-operatives, excepting "service station organizations," subject to the commission for all purposes.

In *Nebraska* a law was passed requiring telephone companies to obtain certificates of convenience and necessity. This law also applies to telephone co-operatives and is referred to in the Standing Committee report.

In *Ohio* a law amends the Public Utilities Commission Act to include within the definition of a public utility nonprofit telephone companies.

In *Tennessee*, two bills were passed which authorize local utility districts in two counties to go into the telephone business and exempts them from commission jurisdiction.

In *Wisconsin* a law amends the Securities Act, the effect of which would be to exempt from the jurisdiction of the commission approval of laws made by the Federal government to rural co-operatives.

South Dakota passed a law requiring all telephone companies, including co-operatives, to obtain certificates of convenience and necessity.

TWO other laws relating to co-operatives were passed in *North Dakota* and *Minnesota*. In North Dakota the law provides that electric co-operatives may contract with other co-operatives or with public utilities, municipalities, or any department of the state or Federal government for sale at wholesale to or interchange of electric energy with such city, state, or Federal agency, and also provides that such utility or agency shall be eligible for membership in the co-operative.

Minnesota provides a nonprofit corporation act to regulate the formation, dissolution, consolidation, or merger of all domestic nonprofit corporations which may be formed under the act for any lawful purpose. The act does not make it clear but it is felt that electric or telephone co-operatives could be formed under the act.

Another group of laws of interest to utilities spring from the passage by Congress of the Federal Civil Defense Act, Public Law 920 of the 81st Congress. Most of the states passed comprehensive civil defense laws which provide for the emergency taking of public utility facilities. However, time does not permit going into these laws in detail now.

APPENDIX

Current Problems of Utility Financing

By EDWARD HOPKINSON, JR.*

THE topic of "Current Problems of Utility Financing" requires a discussion, not merely of the several kinds of securities available for raising new capital and the method of marketing, but, more importantly, the characteristics of and climate surrounding different types of enterprise which are in competition for the investors' dollars. The statistical data published by the Federal Reserve and by the U. S. Department of Commerce make available industry characteristics and trends. The public information requirements of the Federal and state security regulatory bodies and of the stock exchanges give detailed information regarding the individual performance of units within an industry. This and other material make possible a discriminating appraisal by investors and by the financial services of the impact of changing conditions upon the various types of industry and upon individual units within an industry.

Any discussion of public utility financing deals with enormous amounts of securities in terms of dollars. For the first six months of 1951, the figure was 1,655,000,000, divided as follows: electric companies (which include the combination electric and gas companies), 790,000,000; gas companies (almost entirely natural gas), 373,000,000; telephone, 479,000,000; and "other" (principally water companies), 13,000,000. This compares with approximately 3 billion in each of the years 1948 and 1949 and in 1950, or a total of approximately 11 billion for the three and one-half years.

These sums were raised very largely for investment in plant and equipment, although in the years 1948-1950 there were about 1.4 billion refundings and about 400,000,000 portfolio sales of common stocks to meet divestment requirements under the Public Utility Holding Company Act.

THESE expenditures for new plants are illustrative of the enormous increase in the demand for the utility services furnished, partly the result of the increasing population but, more particularly, as a result of new uses and improved distribution, as exemplified by the long-distance transmission of natural gas.

The size of the new financing required is due to two main factors: (1) A rate regulated industry cannot generate as much cash within itself through retained earnings as the usual unregulated industrial enterprise; and (2) it requires a larger capital investment per dollar of annual revenue than a typical industrial unit.

Figures have been compiled for the year 1950, comparing the electric companies with several other important industrial classifications. These show that the electric companies had an investment of $4.09 in plant and inventories at the end of the year for $1 of annual revenue (before depreciation). The substantially corresponding figure for natural gas transmission companies is $3.90, $2.90 for manufactured gas operating companies, and $3.10 for natural gas operating companies. For the Bell system it is also $3.10. The corresponding figures for several classes of industrial companies were:

Oil and gasoline	$1.52
Department store chain	.33
Food processor	.28
Motorcars	.20
Retail grocery chain	.09

ON the subject of retained earnings, figures have been compiled for the electric companies, covering the 5-year period 1946-1950, showing that their new capital required for expansion was obtained 61 per cent through the sale of securities (including other borrowings) and 39 per cent from internal sources, chiefly depreciation and retained earnings. For all industries only 25 per cent

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was obtained from the sale of securities and 75 per cent from internal sources.

For the telephone industry, taking the great AT&T system, there were relatively little retained earnings on balance, only about 11 per cent; there was no direct AT&T equity financing, except about 2,800,000 shares sold on employee purchase plans at $20 under the market upon completion of the instalment payments. AT&T funded debt on a year-end consolidated basis increased from 31 per cent of capitalization in 1945 to a peak of 51 per cent in 1948. This was reduced to 47 per cent at December 31, 1950, as a result of conversion of debentures into common stock and employee purchase payments. Although about $415,000,000 of convertible debt financing was effected early this year, subsequent conversions have brought the ratio now down to about the 1950 year-end position.

During the period 1948-1950, equity financing directly with the investing public by the telephone industry (other than the discount purchases by AT&T employees) aggregated only about $160,000,000. Where common stock offerings by telephone operating companies were made to stockholders, in several instances the terms were unattractive to the public investor and, were it not for the parent company's subscriptions, the offering would have failed to provide the necessary capital.

THE electric utility industry has been particularly fortunate in several respects. At the beginning of 1940 it had a total generating capacity of about 39,000,000 kilowatts. At the end of 1950 this had been increased to about 68,000,000 kilowatts, with the result that the available capacity is about three-fourths greater than it was in 1940. The additions scheduled for the 3-year period, 1951-1953, will range between 5 and 6,000,000 additional a year.

This means that the electric utilities have a tremendous amount of new and efficient generating capacity, almost fully automatic and interchangeable as to types of fuel, powdered coal, oil, or natural gas in areas near the source of production. The use of higher temperatures and other engineering advances, as well as reducing the amount of labor required, have reduced the final cost per kilowatt almost unbelievably. In a recent brochure published by Niagara Mohawk Power Corporation, the fuel costs in some of their newer units was 2.81 mills per kilowatt-hour output, compared with 8.79 mills in one of the older units still in service.

As far as the future increase in the cost of doing business is concerned, the two major items, outside of taxes, are fuel and labor. Fuel used for generating in 1950 took only a little over 16 cents out of the revenue dollar, and wages only a little over 19 cents. Even if we were to assume substantial increases in fuel prices, almost three-fourths of it would be absorbed by fuel adjustment clauses now contained in many of the rate schedules of the electric utilities.

In respect to labor costs, the electric utilities have a great advantage over the telephone industry, where labor took in 1950 about 50 cents out of every revenue dollar in spite of some progress to greater automatic operation. Local mass transportation is still worse off, with labor currently taking about 60 cents of every revenue dollar.

IN maintenance expenditures (largely labor) the telephone industry is also at a substantial disadvantage compared to the electric companies, whose maintenance expenditures average about 7.5 per cent of the revenue dollar as against about 21 per cent for AT&T. An important part of this differential is represented by the heavy cost of maintaining delicate telephone apparatus inside the house, as compared with the electric company whose responsibility ends at the meter.

While there have been a few modest increases in electric rates, electric service in 1950 was still about 3 per cent cheaper than it was in 1940. This certainly leaves room for rate increases if required, as they certainly will be for most com-

panies under the proposed increases in Federal income taxes.

From the standpoint of future earnings, all the public utilities are now in a much better position than they were during the last war when they were subject to the same onerous excess profits tax as industries generally. Under the old excess profits tax, it would have been necessary to get a revenue increase of about $7 to bring one additional dollar through to net. Under the present and proposed excess profits tax law, most utilities will not have to pay any excess profits tax under the special provisions of the law, and, at an ordinary income tax rate approximately 50 per cent, $2 of additional revenue would bring $1 through to net.

I have already referred to the great differential in cost between operating one of the older electric generating units as compared to the newer ones. A substantial part of the newer equipment was intended as replacement of older units, or at least permitting the use of the older units as stand-by or to carry short peaks. However, the increase in demand has been such as to require a pretty full utilization of practically anything that would run, irrespective of cost of operation.

A moderate business recession, with a cutback in industrial usage, where rates are in the lowest price classifications, might even increase the net earnings of many companies. The use of electricity in the modern home is so essential for not only lighting and operating motors essential for heating furnaces but in many for refrigeration and cooking, that it is unlikely any moderate business recession would seriously reduce that demand.

THE same thing is probably not true of the telephone industry, at least to the same degree. There is still a demand for new telephones which the companies so far have been unable to catch up with. A good many of the new telephones have gone into lower-priced homes, whose occupants would be the first affected by a business recession and higher unemployment. After all, the phone in the corner drugstore can be availed of much more readily than to find a substitute for the electric current or the gas essential for household operation.

It has also been the experience in past business recessions that the use of the telephone is more sensitive to the business cycle than electricity. In the course of an investment banking seminar held during June, 1951, at the University of Pennsylvania, statistics were presented showing that during the depression of the 1930's customers of the Bell system declined 17 per cent, compared to 3 per cent for electric utilities, and revenues declined 21 per cent for the Bell system, compared to 12 per cent for the electric utilities.

Another aspect of the problem lies in the greater margin of safety for return on investment in the case of the electric industry over the telephone industry. In 1950, 22 per cent of operating revenue was available to the electric utility investor, while only 10 per cent of revenue was available for the investor in the Bell system, according to the statistics presented at the same seminar.

A decade ago securities of natural gas companies were practically unknown and unavailable as an investment medium. The older fields in western Pennsylvania, West Virginia, and the Middle West, east of the Mississippi river, were becoming exhausted. Practically all the natural gas was either being produced by the oil companies or affiliated interests. The shares of natural gas companies were relatively closely held and only publicly traded in relatively small amounts.

WITH the great new discoveries of oil in the Southwest and West, enormous quantities of natural gas were developed, particularly at the lower depths made possible by modern drilling methods. Two things in particular have made possible the opening up of extensive new markets for natural gas. One is the ability to transport it for long distances in large diameter pipelines under high pressure, and the other, the utiliza-

tion of old, largely exhausted, natural gas fields for underground storage nearer the ultimate markets than the original sources of production. This makes possible a better load factor, storing in the warmer months and drawing down in the house-heating period. It is an interesting fact that instead of losing gas in storage, a greater amount is taken out than was put in. This is the result of some gas existing in the field being taken out which could not be economically recovered except as a part of the storage and removal operation.

Between 1940 and 1945 the number of shares of natural gas companies publicly held almost tripled, from a market value in 1940 of about 265,000,000 to over 706,000,000. The number of shares traded on exchanges increased from approximately 1,000,006 in 1940 to over 7,000,000 in 1945. During this period Standard Oil of New Jersey distributed to its stockholders, 2,700,000 shares of Consolidated Natural Gas Company previously owned by it; Ogden Corporation sold its holdings of over 2,000,000 shares of the Laclede Gas Light Company; United Light & Railway Company and Lone Star Gas Company sold or distributed to their stockholders over 650,000 shares of Northern Natural Gas Company; over 400,000 shares of Panhandle Eastern Pipe Line Company stock went into the hands of the public, largely through distributions or sales made directly or indirectly by Phillips Petroleum Company; and some 300,000 additional shares of Southern Natural Gas Company went into the hands of the public.

The availability of these shares to investors, and the progress in the industry, attracted attention to natural gas as an important investment field, which it never enjoyed at an earlier date. The securities of natural gas companies, therefore, must be regarded as essentially newcomers in the investment field, but, none the less, have now attained a position of sound investment quality.

THE local transportation companies have been, of course, "the problem children" of the regulated public utilities. During the war when there were restrictions on private automobiles and gasoline and many industries were working three shifts seven days a week, practically all the local transit companies made money. In 1945, these transit companies were able to carry out a fair amount of refinancing. That year bond sales aggregated almost $50,000,000, but virtually all of this was for refinancing outstanding securities and not to raise new money. Since January 1, 1945, slightly over 14,000,000 preferred stock financing has taken place, of which more than 12,000,000 was in 1945.

THE conditions which permitted some bond refundings on the basis of high wartime earnings, carried through to the first half of 1946, but thereafter it became clearly apparent the transit industry would suffer seriously because of rising costs of material and labor and declining traffic. Further refinancing, or raising new money on a long-term basis, was generally impracticable despite the continuation of low money rates generally. This situation has been aggravated by the recent rapidly rising costs of labor and materials, and the increasing spread of the 5-day workweek. In the old days, Saturday was one of the best passenger days of the week. Now it is down almost to the level of Sunday riding.

Outside of equipment trusts, very few new transit bonds have been sold, publicly or privately, after 1946. Certain exceptions have been the $500,000 Ohio Rapid Transit first 4½s, sold publicly in 1948 to pay for the purchase of the entire capital stock of four bus companies operating in Ohio, which offering was confined to residents of Ohio, and the refunding of $3,500,000 of Los Angeles Transit Lines first mortgage 3⅞ per cent serial bonds in March, 1951, by a $3,250,000 bank loan with the balance of cash required in the transaction drawn from treasury funds.

From 1945 to date, almost 16,000,000 market value of common stocks have been sold, but all of these were out of

portfolio and none of them for new money for the operating company. These were all made on an extremely high earnings price-ratio basis in the light of prevailing general market conditions at the time of sale, or a high yield basis in instances where companies were paying out in dividends more than current earnings.

Now, what does all this add up to as far as public utility financing is concerned?

The electric utilities have shown an ability to issue bonds, debentures, preferred stocks, and common stocks in amounts adequate to meet their demands for new capital and keep their capital structures in good balance.

In the divestments under the Public Utility Holding Company Act, the SEC established a rule of thumb, which has worked very well, that where common stock equity (including earned surplus) represented less than 25 per cent of capitalization, a restriction on common dividends to not over 75 per cent of available net earnings would be imposed until that minimum figure was exceeded. Most companies in the electric utility field seem to be trying to keep a common equity and earned surplus of 30 per cent or more, and a debt ratio of under 50 per cent, preferred stock filling in the gap. These ratios vary from time to time as one type or the other of new securities is issued, but it seems wise to endeavor to keep the debt ratio under 50 per cent so as to leave room for debt financing without adversely affecting the quality rating of a company's outstanding or new securities, when equity markets are relatively unfavorable.

Most electric utility debt is long-term, twenty-five or thirty years, occasionally longer, with a small sinking fund but one that can usually be satisfied by property additions as an alternate to cash payments for debt retirement.

Most electric company preferred stocks do not have, and, in my opinion, should not have sinking funds. If a company is undertaking fixed payments to retire its preferred stock, it might as well sell a serial debenture if its capital structure permits and obtain the lower interest rate and the income tax deductible advantage.

Natural gas companies, particularly those which have been engaged in expensive pipeline construction, usually have a higher percentage of debt but for a shorter term, usually twenty years, and with a complete serial or sinking-fund pay-out prior to maturity.

The natural gas preferred stocks, particularly those involving substantial construction expenditures, have usually been marketed at substantially higher dividend rates than the electric companies, and also with sinking funds.

The relatively early pay-out on natural gas debt and the sinking funds on natural gas preferreds are logical on account of the "life" factor involved. Gas companies are reluctant to "prove" supplies of gas in the ground (reserves) for a period of longer than twenty years on account of property taxes on the value of "proven reserves," as well as the uncertainties of longer geological forecasting. I believe the opinion of the best geological experts is that an adequate supply of natural gas can be counted upon as available for the foreseeable future, although probably at higher prices.

Natural gas securities have also developed a certain air of romance as petrochemical scientific advances have indicated many fields of more valuable utilization of natural gas than as a fuel.

As a result of these possible new uses for natural gas as well as the growth factor in its use as a fuel, natural gas common stocks have attained a favor with investors that causes many of the most attractive to sell on a yield basis that is lower and a times-earnings basis that is higher than many soundly capitalized and well-established electric companies. The natural gas common stocks are also favorably affected by the relatively rapid payoff of the senior securities ahead of the common stock, resulting in the improvement of the common stock equity position.

FINANCING the telephone business has presented a greater problem. For the reasons I have already indicated, its operating expenses have gone up much more rapidly than the electric or gas utilities and an expanding gross revenue has not obviated the need for urgent rate increases. These have been bitterly fought at times by local interests, not always without an eye to political considerations, and at times by representatives even of the U. S. government agencies, as inflationary.

There is no doubt that continuing inflationary pressures, with further increases in wage costs, will require more frequent and larger rate increases for the telephone industry, than for either the electric utilities or the natural gas companies, to maintain earnings at a level that will encourage new financing at a reasonable cost.

The Bell system's long-range financing program is designed to reduce the debt ratio to about one-third of total capitalization where its debt ratio was when its debt securities were appraised by investors comparable to best credits of the electric utilities. A smaller portion of debt in the capital structure of the telephone industry should be maintained, as compared to the electric utility industry, to compensate for the greater volatility of its business and allow room for financing the system's future construction requirements through debt securities, if necessary, in periods when the equity market would be unavailable on a satisfactory basis.

It has been indeed fortunate for all types of utilities during this postwar period, that there has been so-called "easy" money, at least for senior securities, during most of the time. It permitted many refundings that replaced high interest debt and high dividend preferred stocks with issues at substantially lower yields.

The peak of high prices and low yields on bonds came in 1946. Since that time the trend has been to slightly lower prices and higher yields, accentuated by last spring's change in Federal policy and the freeing of the government bond market from artificial supports. Preferred stock prices and yields have, in general, followed the same trend as those of the public utility bonds.

PUBLIC utility common stock prices hit an unjustified war scare low in 1942, but rose to a peak in 1946, which has not been exceeded since the short-lived boom of 1936-1937. Since 1946 the price trend was generally downward until after a recovery which started toward the end of 1948, interrupted only by the shock of the Korean hostilities. However, today the utility common stock price averages are substantially below the 1936-1937 highs, and below the 1946 peak in spite of the enormous amounts of retained earnings which have been ploughed back into the properties. It has been, therefore, relatively expensive for utilities to raise new common stock money. Nevertheless, generally speaking, the electric utilities, in particular, have followed a conservative debt policy and have not been too much tempted by cheap bond money and income tax differentials.

In my opening paragraph, I made reference to methods of marketing. I had particularly in mind private placements and the regulatory requirements imposing upon certain public utility companies compulsory competitive deadline sealed bidding.

Of the approximately 11 billion securities marketed in the 3½-year period, 1948 through the first six months of 1951, almost 8 billion were debt securities. Of this amount about 1.9 billion, or approximately 25 per cent, were sold directly to a small number of large institutional investors. In some cases investment bankers acted as negotiators for a fee, but in other cases the placement was made directly by the issuing companies without the services of any investment banker. In most cases, the companies adopting this method of marketing were impelled to do so to avoid the delays and expense of registration requirements under Federal Securities acts. Of course, this practice is influenced by the fact that the low interest

rates now available upon investment grade debt securities are not attractive for individual investors, and practically all such investment rated debt securities, whether privately placed or publicly offered, find their way into the portfolios of insurance companies, pension funds, and other institutional investors.

THE double effect of this, however, has been to weaken the distributive function of the investment banking machinery of the country, and also to deprive smaller institutional investors of the opportunity to participate in many of the very best credits.

I have no suggestion that private placements should be abolished by legislation or that burdensome restrictions should be imposed, but I do think there is a danger if such practice be extended too far, and that the premium on private placements should be minimized to the greatest extent possible by simplifying the registration process and also making it less expensive and time consuming.

In connection with competitive bidding, I emphasize the word "compulsory" because I do not believe it is always in the best interest of either issuing companies or investors to have that type of marketing operation, particularly in the case of equity securities.

Admittedly in an "easy" money market, where there are more dollars seeking investment than new securities being offered, higher prices and lower investment banking "spreads," in some instances, have been obtained than would have been arrived at as the result of private negotiation. I am not at all certain, however, that it is in the long-range interest of a company or its stockholders to obtain the highest price that any group of investment bankers is willing to pay. In some instances, investment bankers have had serious losses as a result of overguessing the market. No company likes to see public investors take a loss in its securities. In my opinion, it is generally better for a company to sell its securities to the public at a price which, after successful distribution, will moderately move upward, subject, of course, to general changes in market conditions. In the case of debt securities, with its largely institutional market, this factor is not as important as in the case of equity securities which more generally find their way into the hands of many individuals.

IN the case of equity securities, I am satisfied that on many occasions investment bankers would have been willing to pay, and could have successfully marketed preferred and common stocks at higher prices than they were willing to bid competitively. This is in part due to the serious adverse effect that may be reflected marketwise on the public offering if there is a wide spread between the successful bidder and the other bidders. This manifested itself particularly in connection with several preferred stock offerings in recent years, when buyer resistance was registered for such issues at the public reoffering terms, with the result that the issues were ultimately distributed only at reduced prices. To mention a few: Consumers Power Company, 4.52 per cent preferred, where the highest bid was about $2.60 above the next best bid; Southern California Edison, 4.88 per cent preferred, where the differential between bids was $0.84 on a $25 per share, equivalent to $3.36 per $100 of par value; and Northern States Power Company, 4.10 per cent preferred, with a differential of about 2.41 per share. Just last week it was again evidenced in the marketing of the new $45,000,000 Tennessee Gas Transmission Company bonds, when the difference between the two highest bids represented about 1¼ points, or $12.50 per $1,000 bond. These pipeline bonds were first intended to be reoffered to the public by the winning syndicate at a price of 101.44, to yield 3.40 per cent, but, after the bidding, decision was made by the bankers to drop the reoffering price to 100.718, to yield about 3.45 per cent, compared to the syndicate bid of 100.307, for an underwriting spread of only $4.11 per $1,000 bond to cover compensation for risk and

expenses of distribution. Even this price reduction did not result in the successful placement of the bonds.

In my opinion, managements should be free to exercise their own judgment under the circumstances of each case and to follow the route which they believe to be in the best interests of their company in marketing its securities. In a negotiated transaction they agree upon the price at which the securities will be offered to the public and they can and do exercise a control over the distribution, which in competitive bidding they cannot do.

I believe in time a broader realization of this will be reached, and that some relaxation of the present rules, in so far as they are applicable, will be brought about to the advantage of both issuers and investors.

EDITOR'S NOTE: *Part II of the foregoing Appendix will be published in the next issue of* PUBLIC UTILITIES FORTNIGHTLY, *which will be out November 22nd.*

Titles and Index

Preprints in This Issue of Cases to Appear in PUBLIC UTILITIES REPORTS

TITLES

INDEX

Re Belleville-St. Louis Coach Company

39095
September 6, 1951

INVESTIGATION *of proposed increase in fares for bus service; increase disapproved.*

Depreciation, § 71 — Transit company — Busses.

1. The average useful life of new busses placed in service by a transit company, as a basis for depreciation, was held to be at least ten years in view of past experience; and charges to bus depreciation were held to be excessive when based on seven or eight years of service life, p. 68.

Intercorporate relations, § 13 — Evidence of affiliation — Transit company and related companies.

2. A transit company operating busses, a company leasing its garage and performing services for the transit company under contract, and a company which had acquired from the transit company a terminal to be used by the transit company in consideration of a payment of 5 per cent of gross revenue were held to be affiliates, under the provisions of § 8a of the Illinois Public Utilities Act, where the transit company had caused the incorporation of the other two companies; the stockholders, officers, and employees were substantially the same; each of the directors was regularly employed by the company of which he was a director in a capacity other than director; most of the stockholders were directors of the various companies; and unity of control of the three companies was demonstrated, p. 69.

Expenses, § 83 — Payments to related companies — Proof as to reasonableness.

3. The reasonableness of the prices which a public utility company pays for commodities and services is an appropriate subject for investigation in a rate proceeding, and any relationship between the buyer and seller which tends to prevent arm's-length dealing may have an important bearing on the reasonableness of the selling prices; and common ownership of a substantial amount of stock of corporations gives such indication of unified control as to call for close scrutiny of a contract between such corporations whenever the reasonableness of its terms is the subject of inquiry, p. 72.

Rates, § 186 — Reasonableness — Burden of proof.

4. A public utility company applying for an increase in rates has the burden of proving that an increase is justified, p. 72.

Expenses, § 15 — Reasonableness — Burden of proof — Payments to affiliates.

5. A public utility company seeking a rate increase must submit evidence with respect to all costs which enter into the ascertainment of a reasonable rate, including the cost of services furnished by affiliates, p. 72.

Expenses, § 5 — Powers of Commission — Intercorporate agreements.

6. The Commission, in arriving at the reasonable expense of a company furnishing transportation service, is not concluded by the price fixed in agreements between the company and its affiliates; and even consent by the Com-

mission to a contract or arrangement between affiliates does not constitute approval of payments thereunder for the purpose of computing expense of operation in any rate proceeding, p. 72.

Rates, § 195 — Unit for rate making — Affiliated companies.

7. A transit company and affiliated companies performing services which the transit company formerly performed for itself, and which are normally performed by a transportation company as a part of its normal public utility business, must be treated as one business concern for the purpose of determining reasonable rates, although the companies have complied with legal formalities necessary to constitute three separate entities in abstract legal theory, where there is an obvious unity of control and management and there is no separateness in fact, p. 73.

Expenses, § 45 — Directors' fees — Affiliated companies.

8. Directors' fees charged to operating expenses of a transit company were held to be exorbitant where each director was a regular employee of one of three affiliated companies and each director received $100 per month as directors' fees in addition to compensation for his regular employment, it appearing that in the case of one of the companies directors' fees amounted to 16 per cent of the company's gross revenues and 24 per cent of the company's expenses, p. 73.

By the COMMISSION: On December 14, 1950, Belleville-St. Louis Coach Company (Coach Company) filed its Tariff MP–Ill. C. C. No. 18 with the Illinois Commerce Commission (Commission) in which it proposed to increase its city and minimum fares from 7 cents to 8 cents and to limit the use of the 5-cent school fare to the period from Mondays through Fridays in each week. By order entered on January 9, 1951, the above-mentioned tariff was suspended until May 15, 1951.

All interested parties having been notified, the matter came on for hearing before a duly authorized examiner of the Commission at its offices in Springfield, Illinois, on February 20, 1951, at which time Coach Company was represented by counsel and proceeded to introduce evidence in justification of the proposed increase and change in its rates.

Thereafter, by order entered on May 9, 1951, the suspension period was extended until November 15, 1951. The matter was set for further hearing at the offices of the Commission at Chicago, Illinois, on July 23, 1951, and Coach Company was requested to produce certain documents and data relating to the operations, finances, holdings of stock in, and the relation between, Coach Company, Bus Supplies Co., Inc., and Belleville Terminal, Inc. At the hearing held on July 23, 1951, Coach Company was represented by counsel and the president of Coach Company and the accountant for the three companies hereinabove named produced some of the data requested by the Commission's staff and testified with respect to the issues involved in this proceeding. At the conclusion of the hearing, the case was marked "Heard and Taken."

Operations of Coach Company

Coach Company operates what it

calls its City Division, that prior to September 17, 1950, consisted of five lines which on that date were consolidated into four lines, operated in the city of Belleville; its Scott Field Division which operates between the Public Square in Belleville and the Scott Field Air Force base approximately 8 miles east of Belleville; its St. Louis Division which operates between the Public Square in Belleville and St. Louis, Missouri, a distance of 15 miles; and also charters busses for special trips. It also operated its Sparta Division from 1945 until 1949 when that line was transferred to Dixie Greyhound Line Company pursuant to authority of this Commission.

The line constituting the St. Louis Division is operated on a zone-fare basis, the distance between the Public Square in Belleville and the Greyhound Terminal in St. Louis being divided into six zones. The St. Louis Division is a closed-door operation in the fifth and sixth zones, i.e., no passengers are picked up in the fifth and sixth zones for transportation to any point within such fifth and sixth zones. (The fifth zone extends from the Alton & Southern crossing to East St. Louis and the sixth zone extends from East St. Louis to St. Louis.) After crossing the Illinois-Missouri boundary this line runs about seven-tenths of a mile to the terminal in St. Louis.

Coach Company contends, according to its Exhibit 4, that during the year 1950 it carried a total of 6,092,612 passengers; that its total operating revenue amounted to $788,903; its total operating expense amounted to $771,008 and its net operating profit amounted to $17,895. It also contends, according to Exhibit 6, that the City Division operated at a deficit of $32,606 in the year 1950.

Coach Company estimates that the increase of one cent in the city and minimum fares would yield approximately $18,189 in additional revenue per year. In arriving at this estimate, Coach Company claims that its City Division carried 2,248,345 revenue passengers during 1950; estimates that the number of minimum fares carried on its St. Louis Division during 1950 (i.e., passengers carried between points in a single zone) to be approximately 480,000; and estimates that approximately one-third of said 2,728,345 passengers carried between points in the city of Belleville or in a single zone were carried on the 5-cent students' fare. In arriving at said estimate of $18,189 of additional revenue, no allowance was made for additional revenue resulting from the elimination of the students' fare on Saturdays and Sundays nor does it appear that any allowance was made for increased revenues resulting from such fare increase on the Scott Field Division.

Coach Company also states that its expenses for the year 1951 will be reduced by approximately $10,000 as a result of the consolidation of the five lines in its City Division into four lines, which took place on September 17, 1950.

According to Coach Company's Exhibit 2, the total revenues and the revenues for various divisions for the year 1950 were as follows:

Division	Total Revenue	% of Total Revenue
St. Louis	$509,789	64.6
Scott Field	110,783	14.
City Division	134,666	17.1
Chartered Busses	27,731	3.5
Card Advertising and Express	5,934	.8
Totals	$788,903	100.%

Exhibit 2 shows the following comparison of Coach Company's revenues for the years 1945 and 1950, excluding the Sparta Division which was disposed of in 1949, and miscellaneous income from advertising cards and express:

Division	Revenues Received 1945	1950	% Decrease 1950
St. Louis	$745,934	$509,788	31.6
Scott Field	253,793	110,783	56.3
City Division	146,211	134,666	7.8
Chartered Busses	6,068	27,730	(356.9)*
Total	$1,152,006	$782,967	32.

*( ) Increase

The record shows that Coach Company was unable to supply data with respect to the number of Illinois intrastate passengers carried on the St. Louis Division or with respect to the revenues derived from Illinois intrastate traffic on that division. Coach Company was also unable to produce any data showing the separation of its operating expenses with respect to interstate traffic and Illinois intrastate traffic on the St. Louis Division.

While Coach Company asserts its revenues and expenses for the various divisions are determined on an actual basis, no data was supplied in the record to support the distribution of expenses to the various divisions. Obviously, certain of the expenses, for example general administrative expense, must necessarily be allocated and cannot be charged directly to the various divisions.

[1] Coach Company claims depreciation for the year 1950 in the amount of $49,342 of which $48,439 is applicable to busses. Coach Company calculates depreciation on the straight-line method, depreciating its new busses on the basis of seven or eight years of service life and used busses on the basis of five years of service life.

The annual report of Coach Company which is in the record shows that during 1950 it retired seven busses which were new when purchased and one bus which was used when purchased. Of the retired busses which were new when purchased, four were placed in service in October, 1939, and retired in February, 1950, having been in service ten years and four months; one was placed in service in October, 1939, and retired in December, 1950, having been in service eleven years and two months; one was placed in service in November, 1940, and retired in February, 1950, having been in service nine years and three months; and one was placed in service in November, 1940, and retired in December, 1950, having been in service ten years and one month. The retired bus which was used when purchased was placed in service in October, 1942, and retired in September, 1950, having been in service seven years and eleven months.

Coach Company's witness on depreciation testified that these busses were not used until the date of their retirement but his testimony was self-contradictory and unconvincing. In our judgment the average useful life of new busses placed in service is at least

ten years and the depreciation charged by Coach Company during the year 1950 on its busses was excessive by approximately $10,020.

Coach Company claims that it negotiated a progressive wage increase agreement with its drivers which provided for a 5-cent per hour increase effective August 1, 1950, an additional 4-cent per hour increase effective April 1, 1951, and an additional 3-cent per hour increase effective December 1, 1951. According to its Exhibit 9 it contends that this increase will amount to $12,474 for the year 1951. It makes no allowance for the fact that $3,150 of such increase was also in effect during and reflected in its expenses for the year 1950. Accepting Coach Company's figures and exhibit, the increase in its expense for wages in 1951 over 1950 would be $9,324.

The adjusted net income for the operation conducted by Coach Company on the basis of its revenues and expenses for the year 1950 would therefore amount to $28,591. This figure is arrived at by adding to the reported income of $17,895, shown in Exhibit 4, $10,000 for the estimated reduction in expenses resulting from the consolidation of the lines in the City Division and $10,020 for excessive depreciation charged, and subtracting $9,324 for increase in bus drivers' wages in 1951 over 1950.

According to Commission Exhibit No. 16, Coach Company's property devoted to the public service on December 31, 1950, at cost less depreciation amounted to $185,762. In addition, it had nonoperating property, consisting of real estate which it leased to Bus Supplies Co. Inc., which, at cost less depreciation, amounted to $33,964, and net current assets amounting to $119,548 consisting of cash and bonds.

History of the Business

Coach Company was incorporated in 1933, to provide bus service for substantially the same area it now serves, with a capitalization of $30,000 consisting of 600 shares of the par value of $50 each. No additional new capital has been invested in Coach Company since its organization. In 1936 the capitalization of Coach Company was increased to 2,400 shares of stock of the par value of $50 per share by the declaration of a stock dividend of 300 per cent.

In 1936 a contest for control of Coach Company took place between six shareholders led by one Herman Broer, and other shareholders led by J. L. Wellinghoff, now president of Coach Company, and William Schmidt, Jr., the treasurer of Coach Company from its inception until his death in 1949. Sufficient shares were transferred to J. L. Wellinghoff and William Schmidt, Jr., as voting trustees on December 22, 1936, to enable them to control the company and the faction led by Broer then disposed of their shares to the remaining shareholders. J. L. Wellinghoff then became vice president of Coach Company until August 8, 1941, when he became president, which office he has held since that time.

[2] In May, 1941, Coach Company caused a new corporation, Bus Supplies Co., Inc. (Supplies), to be organized with a capitalization of 2,400 shares of the par value of $5 per share. The stock of Supplies was issued to the shareholders of Coach Company

in the same proportion in which they held the shares of Coach Company for $5 per share. Contemporaneously with organization of Supplies, Coach Company paid a special dividend of $5 per share to its stockholders in addition to the quarterly dividend of $3 per share that was paid on February 21st, May 23rd, August 22nd, and November 29th of that year, so that Supplies' capital was in fact furnished by Coach Company.

When Supplies was organized, Coach Company leased its garage to Supplies, sold certain tools, supplies, and equipment used in the garage to Supplies, and entered into an agreement with Supplies pursuant to which Supplies performed services for Coach Company. These services included the storage and servicing of busses; daily cleaning of busses inside and outside and washing busses when necessary; checking the gasoline, oil, water in the radiators, steering gear, lights, and signals; assigning busses to various runs; taking fare box reading on each bus turned in after its run; greasing busses; checking air in the tires daily; selling gasoline, oil, tires, and parts to Coach Company, and making general repairs to the busses. All of these services and functions had previously been performed by Coach Company for itself by employees who were transferred to Supplies when it was organized and commenced to furnish these services. All of these services and functions are ordinarily performed by bus operating companies as a routine part of their operations.

On August 23, 1950, Coach Company, for the first time, filed with the Commission in Docket No. 38698 a petition asking approval of and authority to enter into a new service contract between Coach Company and Supplies which, except for prices, was the same in all respects as the original contract entered into in 1941. The record in Docket No. 38698 was incorporated in this proceeding as Commission's Exhibit No. 6. At the hearing in Docket No. 38698 counsel for Coach Company contended that Supplies was neither a public utility nor an affiliate of Coach Company. J. L. Wellinghoff, president of Coach Company, testified in Docket No. 38698 and demonstrated much greater knowledge of the affairs of Supplies in that proceeding than he was willing to admit he possessed when testifying in this proceeding.

During the year 1950, gross sales of Supplies amounted to $263,175 of which $256,674 represented sales to Coach Company. All of the sales of gasoline, oil, and tires made by Supplies were made to Coach Company. According to Commission Exhibit No. 10, Supplies had a net profit for 1950 after Federal income taxes of $5,459. In the same year Coach Company showed a loss of $952 on the garage which it leased to Supplies for $3,600 per year. Coach Company and Supplies are represented by the same counsel and the same firm of certified public accountants. Their employees not only belong to the same union but collective bargaining with their employees is carried on jointly and both companies are parties to the labor contract which is now in effect.

In March of 1943 Coach Company caused Belleville Terminal, Inc. (Terminal), to be incorporated with an authorized capital of 6,000 shares of no-par value common stock. Commis-

sion exhibits 7 and 8 show that when Terminal was organized each shareholder of Coach Company subscribed for and purchased 1.65 shares of Terminal stock at the stated value of $5 per share for each share of stock held by such shareholder in Coach Company, making only such adjustments as were necessary to avoid the issuance of fractional shares by Terminal.

Upon the organization of Terminal it acquired from Coach Company by purchase the building and property located at the northeast corner of the Public Square in Belleville which had been used up to that time by Coach Company as a terminal. Coach Company and Terminal entered into an arrangement by which Terminal furnished office space and all the services required by Coach Company "such as gas, light, heat, telephone, and water and all the services of all employees—ticket agents and janitors"—for which Coach Company paid Terminal 5 per cent of its gross revenue.

Terminal distributed to its stockholders from Earned Surplus a stock dividend of 25 per cent (990 shares) in 1943 and a stock dividend of 20 per cent (990 shares) in 1944. It increased its authorized capital to 15,000 shares in 1945 and distributed to 100 per cent stock dividend (6,000 shares) in 1946 and a 25 per cent stock dividend (3,000 shares) in 1948. At December 31, 1951, it had outstanding $75,000 of capital stock, consisting of 1,500 shares with a stated value of $5 per share, and Earned Surplus in the amount of $53,495.

Terminal's gross income which amounted to $52,921 for the year 1950 was classified in Commission's Exhibit No. 10 according to the source derived from as follows:

Rents Received	$43,435
Ticket Sales Commissions	6,123
Baggage Checking	881
Coin Telephone Commission	1,884
Interest Income	598
	$52,921

$39,626 of the amount of $43,435 recorded as "Rents Received" represented the annual payment received from Coach Company in the amount of 5 per cent of Coach Company's gross revenue, and the receipts from ticket sales, baggage checks, and coin telephone commissions were incidental to the transportation business conducted by Coach Company. Thus, at least 92 per cent of Terminal's revenues were derived from Coach Company or from an incidental part of Coach Company's business.

Terminal's total expenses during the year 1950 amounted to $35,180, which was considerably less than the direct payment of $39,626 which it received from Coach Company under the arrangement by which it received 5 per cent of Coach Company's gross revenue.

No attempt was made by either Supplies or Terminal to show what portion of their expenses was properly allocable to the negligible amount of business which they did with others than Coach Company.

On December 31, 1950, all of the capital stock of Coach Company was owned by twenty-seven persons. These twenty-seven persons also owned all of the capital stock of Supplies and of Terminal. Each of these persons owned substantially the same proportion of the stock of each of the

three companies. Twenty-one of the twenty-seven stockholders were directors of the various companies; nine were directors of Coach Company; five were directors of Supplies; and seven were directors of Terminal. Each of the directors was also regularly employed by the company of which he was a director in a capacity other than director. In addition to his compensation for his regular employment, each director received $100 per month as directors' fees.

Thus the directors' fees for the three companies aggregated $25,200 per year. In the case of Terminal directors, fees of $8,400 amounted to 16 per cent of the company's gross revenues and twenty-four per cent of the company's expenses for the year 1950.

The unity of control of the three companies is demonstrated by the fact that the small group that owns them combined a few years ago under the leadership of the present president of Coach Company to wrest control of Coach Company from a group of competing stockholders. While studied efforts were made to escape the technical definition of affiliation contained in § 8a. (2) of the Illinois Public Utilities Act by avoiding common directors and common officials, this is precisely the situation which was intended to be covered by § 8a. (2) (c) of the act. In any event, Supplies and Terminal are affiliates of Coach Company (a) under the provisions of § 8a. (2) (g) since Supplies and Terminal certainly exercise a substantial influence over the policies and actions of Coach Company, and (b) under § 8a. (2) (h) since there can be no doubt but that Supplies and Terminal, as a matter of fact, are actually exercising substantial influence over the policies and actions of Coach Company by action in concert or in conjunction with their stockholders who also own all of the stock of Coach Company.

[3–6] In every proceeding where the issue is whether the rates of a public utility are just and reasonable, the reasonableness of the prices which the public utility company pays for commodities and services which enter into the cost of its product or service is an appropriate subject for investigation, and any relationship between the buyer and seller which tends to prevent arm's-length dealing may have an important bearing on the reasonableness of the selling price. The courts have held that common ownership of a substantial amount of stock of corporations gives such indication of unified control as to call for close scrutiny of a contract between such corporations whenever the reasonableness of its terms is the subject of inquiry.

Coach Company, having applied for an increase in rates, had the burden of proving that an increase in rates was justified. It was therefore bound to submit evidence with respect to all costs which enter into the ascertainment of a reasonable rate including the costs of services furnished to it by its affiliates. In arriving at the reasonable expense of the Coach Company in furnishing transportation service, the Commission is not concluded by the price fixed in agreements between Coach Company and its affiliates. Section 8a. (3) of the act expressly provides that even consent by the Commission to any contract or arrangement between affiliates shall not constitute approval of payments thereunder for the purpose of computing

expense of operation in any rate proceeding.

[7] In the instant case, Supplies and Terminal are actually operating departments of Coach Company, performing services which Coach Company formerly performed for itself and which are normally performed by a transportation company as a part of its normal public utility business. While the three companies have complied with the legal formalities necessary to be constituted as three separate entities in abstract legal theory, there is such an obvious unity of control and management of them that there is no separateness in fact. The record impels the conclusion that Supplies and Terminal were organized in order to siphon off some of the extraordinary earnings that Coach Company was then enjoying and for the purpose of circumventing and nullifying the regulation of Coach Company's rates by the Commission. Accordingly, the three corporations must be treated as one business concern for the purpose of determining reasonable rates.

Since Coach Company did not see fit to furnish information from which the Commission could ascertain the amount of chargeable expenses to the company's nonutility business the Commission must, for the purpose of this order, consider the consolidated income and expenses as relating entirely to public utility business of the company. As a matter of fact, the nonutility income is so negligible that if all the expenses were treated as expenses chargeable against the income derived from the public utility business of the company the results would not be changed.

[8] Viewing the operation of the three companies as one business it is apparent that the directors' fees charged to operating expenses are exorbitant, particularly since each and every one of the directors is a regular employee of one of the companies for which he receives a regular compensation.

In Re California Milk Transport (1945) 62 PUR NS 321, it was held that directors' fees amounting to $9,600 a year were unreasonable for a public utility company with annual revenues amounting to $491,000 and that $720 annually for the three directors would be a reasonable charge to operating expense. While under the circumstances of this case the elimination of the entire amount charged to operating expenses for directors' fees could be justified, the Commission is of the opinion that an allowance of $5,200 for directors' fees, which it deems not only reasonable but generous, should be made.

Commission Exhibit No. 15 is a Consolidated Statement of Income, Profit and Loss for calendar year 1950 prepared by the certified public accountants for Coach Company, Supplies, and Terminal. Significantly it is captioned: "Belleville-St. Louis Coach Company and Affiliated Companies." Before adjustment, Commission's Exhibit 15 shows a net profit on a consolidated basis for year 1950 of $36,171. The same adjustments should be made to this amount as were made to the net income of Coach Company shown in Exhibit 4 and as so adjusted, this amount would be $46,867. Further adjustment because of excessive charges to expense for directors' fees in the amount of $20,000 would result in consolidated

net income of approximately $66,867 for the entire operation.

In Commission Exhibit 14 which was prepared by the certified public accountants employed by the three companies and which is captioned: "Belleville-St. Louis Coach Company and Affiliated Companies Balance Sheet—December 31, 1950," the entire plant devoted to public utility service and to the negligible nonutility business that is done, at cost less depreciation, is stated to be $290,094. Even if we should inflate the rate base to $350,000 by allowing $60,000 for working capital and other items, the company would be receiving a return of over 18 per cent.

At the last hearing in this case the company asserted that its expenses are continuing to rise due to a recent increase in the bridge toll across the Mississippi river (an item that would be chargeable entirely to interstate traffic), new increases in gasoline taxes provided for in recent legislation enacted in Illinois and anticipated increases in Federal income taxes. There is no data in the record for evaluating the effect of such increases on the company's finances in this proceeding. The Commission order in this case, however, will be without prejudice to applicant's right to file a new proceeding on the basis of changed conditions and its experience on a consolidated basis subsequent to the year 1950.

The Commission having considered all of the evidence, both oral and documentary, and being fully advised in the premises, is of the opinion and finds that:

1. That the Commission has jurisdiction of the parties to this proceeding and of the subject matter herein under consideration;

2. That Belleville-St. Louis Coach Company is a public utility within the meaning of § 10 of an act of the general assembly of the state of Illinois entitled: "An act concerning public utilities," approved June 29, 1921, in force July 1, 1921, as amended;

3. That the recitals of fact hereinabove set forth with respect to the organization, history, business, and operating results of Belleville-St. Louis Coach Company, Bus Supplies Co., Inc., and Belleville Terminal, Inc., and the relationship between them, are supported by evidence in the record in this proceeding and are hereby adopted as findings of fact;

4. That on December 14, 1950, Belleville-St. Louis Coach Company filed with this Commission Tariff MP-Ill. C. C. No. 18 proposing to increase its city and minimum fares from 7 cents to 8 cents and to limit the use of the 5-cent school fare to the period from Monday through Friday in each week;

5. That Belleville-St. Louis Coach Company alleges a net operating income of $17,895 for the year 1950;

6. That in computing the alleged net operating income of $17,895 depreciation charged on busses was excessive by approximately $10,020; no adjustment was made for savings from consolidation of routes which the company estimated would amount to $10,000 per year and no allowance was made for an increase in wages the proper allowance for which was $9,324, which adjustments would result in net operating revenue on an annual basis of $28,591 for Belleville-St. Louis Coach Company;

7. That Bus Supplies Co., Inc., and Belleville Terminal, Inc., were organized by Belleville-St. Louis Coach Company and its agents and stockholders to perform services for Coach Company which it had formerly performed for itself; their capital stock is owned by the stockholders of Belleville-St. Louis Coach Company in the same proportion as their holdings in Coach Company; and they are affiliated interests of Coach Company within the meaning of § 8a. (2) of the Illinois Public Utilities Act;

8. That Bus Supplies Co., Inc., and Belleville Terminal, Inc., are in fact operating departments of Belleville-St. Louis Coach Company, performing services which the last-named company formerly performed for itself and which are normally performed by a motor coach transportation company as a part of its normal public utility business; that the amount of business transacted by Bus Supplies Co., Inc., and Belleville Terminal, Inc., with others than Belleville-St. Louis Coach Company is negligible; that while technically they are three distinct legal entities because of the unity of control and management there is no separateness in fact and for rate-making and regulatory purposes all three companies must be treated as a single public utility enterprise;

9. That twenty-one of the twenty-seven persons owning all of the stock of the three companies mentioned above are directors of the several companies and are also regularly employed by the companies of which they are directors; that in the year 1950 said twenty-one directors received an aggregate of $25,200 as directors' fees from said three companies in addition to their regular compensation as employees of said companies; and that the amount charged to expenses for directors' fees was excessive by at least $20,000;

10. That the consolidated net income for said three companies for the year 1950 adjusted to reflect proper adjustments in the net income of Belleville-St. Louis Coach Company and the disallowance of $20,000 in the amount charged to expenses for directors' fees in excess of a reasonable allowance for such fees, is approximately $66,867;

11. That, from Commission's Exhibit No. 14, the consolidated balance sheet for the three companies, as of December 31, 1950, which is the only evidence in the record with respect to the cost value or investment in the entire plant involved in this proceeding which is devoted to public service, it appears that the cost less depreciation of such plant amounts to approximately $290,094, and even if a rate base of $350,000 were adopted by allowing $60,000 for working capital, the adjusted consolidated net income would yield a return of over 18 per cent on such a rate base; and

12. That the rates proposed by Belleville-St. Louis Coach Company in this proceeding are unjust and unreasonable and should be permanently suspended.

It is therefore *ordered* that the Belleville-St. Louis Coach Company's Tariff MP-Ill. C. C. No. 18 be, and the same is, hereby permanently suspended, canceled and annulled;

It is *further ordered* that the Belleville-St. Louis Coach Company be, and it is, hereby directed to cancel upon due notice to the Commission

and the public but on or before September 15, 1951, Belleville-St. Louis Coach Company Tariff MP-Ill. C. C. No. 18.

It is *further ordered* that this order and the action taken by the Commission herein is without prejudice to any new proceeding that might be instituted by Belleville-St. Louis Coach Company on the basis of changed conditions and its financial experience on a consolidated basis subsequent to the year 1950.

It is *further ordered* that all objections to the evidence or motions made with respect thereto be, and the same are hereby, overruled.

MICHIGAN PUBLIC SERVICE COMMISSION

Re Detroit Edison Company

D-1282-A
August 8, 1951

APPLICATION *by electric company for instructions with respect to accounting for Federal income tax results of allowances for emergency defense facilities under § 124A of the Internal Revenue Code; accounting requirements prescribed.*

Accounting, § 28 — Defense facilities — Rapid amortization of cost — Internal Revenue Code — Surplus.

1. The primary effect of the special rapid amortization of costs of defense facilities under certificates of necessity pursuant to § 124A of the Internal Revenue Code is to reduce the amount of Federal income taxes payable during the amortization period and to increase the amount of Federal income taxes payable thereafter during any remaining lives of the properties so amortized; and the current Federal income tax reductions resulting from such special amortization are subject to liability for the larger future Federal income taxes also resulting from such early special amortization and are not available for addition to surplus, p. 77.

Accounting, § 7.1 — Deferred Federal income taxes — Special amortization under Internal Revenue Code — Defense facilities.

2. A company securing certificates of necessity from the Defense Production Administration under § 124A of the Internal Revenue Code, permitting special rapid amortization of costs of defense facilities, was directed and instructed to set up special accounts for "Deferred Federal Income Taxes" to account for reduction in Federal income taxes arising out of special amortization rather than normal income tax depreciation of the cost of such facilities, p. 77.

By the COMMISSION: In this matter, the Detroit Edison Company, a New York corporation, filed with this Commission an application praying for instructions with respect to accounting for the Federal income tax results of

amortization of emergency defense facilities under § 124A of the Internal Revenue Code.

Said matter was brought on for hearing before the Commission on July 27, 1951, at the offices of the Commission, in the city of Lansing, Michigan.

[1, 2] From the petition filed July 9, 1951, the records and files of this Commission and the testimony taken in this matter, it is the opinion of this Commission, and the Commission finds:

1. The Detroit Edison Company, a New York corporation duly authorized to do business in the state of Michigan, made applications to the Defense Production Administration for certificates of necessity under § 124A of the Internal Revenue Code with respect to certain generation and transmission facilities under construction or proposed to be constructed, and on June 9, 1951, said Administration granted to the Detroit Edison Company necessity certificates as follows:

Certificate of Necessity Number	Dated	Facility	Estimated Cost	Percentage Certified for Amortization	Estimated Amount to be Amortized
TA-NC-5494	6/9/51	Conners Creek Unit #15	$21,399,375	25	$5,349,850
TA-NC-5494	6/9/51	Conners Creek Unit #16	21,399,375	25	5,349,850
Total Conners Creek Plant			42,798,750		10,699,700
TA-NC-4248	6/9/51	St. Clair Unit #1	39,040,600	45	17,568,300
TA-NC-4252	6/9/51	St. Clair Unit #2	20,448,550	65	13,291,600
TA-NC-4253	6/9/51	St. Clair Unit #3	18,867,450	65	12,263,800
Total St. Clair Plant			78,356,600		43,123,700
Total Conners Creek and St. Clair Plants			$121,155,350		$53,823,400

the definite amounts to be amortized to be determined by applying the percentages certified to the actual costs of the completed projects as determined and allowed by the Commissioner of Internal Revenue.

2. Such necessity certificates constitute authority for the Detroit Edison Company to amortize for Federal income tax purposes over a period of sixty months (pursuant to § 124A of the Internal Revenue Code) that portion of the cost of such facilities attributable to defense purposes pursuant to the provisions of such necessity certificates; and the Detroit Edison Company, under the provisions of § 124A of the Internal Revenue Code, may elect, at any time prior to completion of full amortization, to discontinue such amortization and return to ordinary depreciation for Federal income tax purposes.

3. The primary effect of the special rapid amortization of costs of defense facilities pursuant to § 124A of the

Internal Revenue Code is to reduce the amount of Federal income taxes payable during that amortization period and to increase the amount of Federal income taxes payable thereafter during any remaining lives of the properties so amortized.

4. The current Federal income tax reductions of the Detroit Edison Company resulting from such special amortization are subject to liability for the larger future Federal income taxes also resulting from such early special amortization and are not available for addition to Surplus.

5. The actual effect of the special rapid amortization of emergency facilities is not to create a windfall but simply to defer Federal income taxes, since the aggregate income tax payments are the same if the tax rate remains constant, whether the deduction is taken in sixty months or spread over a longer period.

6. The Classification of Accounts, as established by this Commission by order dated September 15, 1937, does not specifically prescribe a method of accounting for the Federal income tax effects of amortization of the cost of plant under necessity certificates.

Now therefore, by virtue of the authority vested in this Commission by law, the Commission orders and directs as follows:

1. The Detroit Edison Company is hereby directed and instructed with respect to the Federal income tax results of any allowances for amortization of emergency facilities which it may elect to take under § 124A of the Internal Revenue Code, to account therefor in the following manner:

(a) To charge to "Provision for Deferred Federal Income Taxes" as a separate subaccount under Account 507—Taxes, and to credit to "Reserve for Deferred Federal Income Taxes" as a separate subaccount under Account 258.2—Miscellaneous Reserves, an amount or amounts in total for each year equal to the reduction in Federal income taxes arising out of special amortization, as provided in § 124A of the Internal Revenue Code, rather than normal income tax depreciation of the cost of such facilities.

(b) After such amortization under each necessity certificate is completed or is discontinued by the company and thereafter during the life of such property or until the earlier exhaustion of the portion of the Reserve for Deferred Federal Income Taxes related to such property,

(1) to charge to "Reserve for Federal Income Taxes" and to credit to "Portion of Current Federal Income Taxes Deferred in Prior Years" (a separate subaccount under Account 507—Taxes) an amount, or amounts, in total for each year for each necessity certificate, equal to the increase in the Federal income taxes payable for that year due to the fact that normal depreciation cannot be deducted because of previous amortization of the property under such necessity certificates, and

(2) to charge to "Reserve for Deferred Federal Income Taxes" and to credit to "Portion of Current Federal Income Taxes Deferred in Prior Years," an amount, or amounts, equal to any balance in said reserve at December 31st of each year for plant retired during said year which had been amortized under such necessity certificate.

(c) Within sixty days after the end

of the first year in which amortization under each necessity certificate is taken and within sixty days after the end of each year thereafter during the life of the property included in said necessity certificates, the Detroit Edison Company shall by statement duly verified report to this Commission with respect to each necessity certificate, the amount of plant costs amortized, the resulting reduction in Federal Income Taxes, the entries made in accordance with this order, the cost of plant retired which was included in such necessity certificate, and any other pertinent data or calculations concerning the accumulation or disposition of the "Reserve for Deferred Federal Income Taxes" which the Commission may request.

(d) To provide in its books of account for retirement of the properties covered by the necessity certificates by appropriations to Retirement (Depreciation) Reserve in amounts consistent with its practice for like property not covered by necessity certificates.

The Commission retains jurisdiction of the matters herein contained and reserves the right to issue such further order, or orders, as the circumstances may require.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Boston Edison Company

D.P.U. 8944
July 24, 1951

INVESTIGATION *by Commission of rates filed for street lighting service; approved as modified.*

Rates, § 362 — Electricity — Street lighting — Burden of cost.

1. Municipalities which require excess investment in street lighting equipment should bear the additional cost involved, since the street lighting load applies within a given area and only to one customer within each area, the load factor is constant over the years, the utilization equipment is owned by the company, and the cost of the equipment exclusively dedicated to this purpose is directly allocable to this particular service and is ascertainable, p. 82.

Rates, § 344 — Street lighting — Municipalities — Burden on taxpayers.

2. The fact that a municipality is charged increased rates for street lighting service with the load eventually falling on taxpayers instead of general domestic and other customers, who may or may not be the same persons, is not a consideration in establishing such rates, p. 82.

Return, § 65 — Increase for part of operations — Requirements of over-all operations.

3. A utility seeking a rate increase on part of its operations must prove not only that the increase is justified as to the particular service affected, but also that its over-all operating results require that it have the additional revenue in order to realize a fair return, p. 82.

Return, § 87 — Electric company.

4. A proposed street lighting rate increase that would yield a return of approximately 5.4 per cent on net plant was considered reasonable, p. 82.

Return, § 24 — Expansion program financing — Statutory debt limitation — Attraction of capital.

5. Rising costs and an electric company's need to finance a large expansion program were given weight in a rate proceeding because the company's capital structure was about 45 per cent debt ratio and required by law to stay under 50 per cent, with the consequence that a substantial amount of future issues would have to be equity securities, for the sale of which it would be necessary to maintain somewhere near present earnings, p. 82.

Rates, § 242 — Modified tariff — Effective date of original tariff — Street lighting equipment.

6. An electric company was permitted, in an amended tariff, to charge increased rates for street lighting equipment installed after the effective date of its original tariff, which had been suspended, because a company's revenues should not be permanently affected by the Commission's power to suspend rates pending investigation and because the company's customers had adequate warning that equipment installed after such date might be subject to substantially increased rates, p. 83.

Rates, § 249 — Effective date of increase — Street lighting — Municipal budgets.

7. The effective date for increased street lighting rates was postponed to the first day of the coming year because most municipal budgets for the current year are customarily closely allocated by the middle of such year, p. 84.

Rates, § 149 — Increase for street lighting — Effect on municipality's modernization program.

Statement that increased rates for street lighting, which will interfere with a municipality's modernization program are regrettable, but unavoidable because it is the Commission's statutory duty to authorize such increases wherever costs and financial conditions demand such changes and because a municipality, like any citizen, must modify its programs in an era of increased prices, p. 84.

APPEARANCES: Frederick M. Ives, for Boston Edison Company; Daniel G. Rollins, Town Counsel, for town of Brookline; William L. Baxter, Corporation Counsel, for city of Boston.

By the DEPARTMENT: Boston Edison Company (hereinafter referred to as Edison) filed a new schedule of rates and charges for street lighting service on February 13, 1950, stated therein to be effective March 1, 1950, applicable throughout its territory. These schedules were suspended by order of the Department until January 1, 1951, unless otherwise ordered, and an investigation was instituted by the Department upon its own motion. A public hearing was held on April 5, 1950. Subsequent to this hearing, at the joint request of certain of the communities affected and Edison, the proceedings were reopened and further hearings held on January 11, 1951, and from time to time thereafter until May 16, 1951. A stipulation was filed by Edison postponing the effective date

of the tariff until order has been entered by the Department in these proceedings.

On February 26, 1918, the Board of Gas and Electric Light Commissioners, one of the predecessors of this Department, issued an order in an arbitration proceeding between the city of Boston and Edison, wherein such Board established certain basic rates for street lighting service. The proceedings before the Board were apparently very extensive. It was stated in the decision that the record contained over 10,000 pages and over 360 tables and exhibits. It is obvious that, as the Board therein stated, the parties were publicly and exhaustively heard, and we believe that it is fair to assume that all elements of revenue and expense were fully considered at that time. The rates so established are fundamentally those which have been in effect throughout the years since 1918, with such modifications as the changes in the art have required, except that Edison's fuel charge was extended to apply to street lighting facilities in August, 1947.

As might be expected, the proposed rates affect all of the forty cities and towns within the territory served by Edison. Under the present rates, the total annual gross revenue derived from street lighting service in this territory is $1,814,567. It is estimated that the proposed rates would result in total gross revenues of $2,011,626, a difference of about $197,059, which additional burden would be distributed in varying proportions among the cities and towns so served. The bulk of the increase would, of course, be borne by the city of Boston.

Under the existing schedules, street lighting service is furnished on a basic yearly charge which varies only according to the size of the light and the hours of use. The lamps, poles, and wires, with certain exceptions, are furnished and maintained by the company and any changes in facilities once installed are made at the expense of the customer. The proposed rates introduce a new concept in that the rates vary not only according to the size of the light and hours of use but also according to the type of construction and the date of construction. A differential was introduced as between lamps connected overhead and lamps connected by underground cable. A further differential was introduced as between facilities installed prior to March 1, 1950, and those installed subsequent thereto.

The proposed schedule was established by taking the 1918 rates as a basis for the rate for overhead connected lights on customer-owned poles installed before March 1, 1950. The company then computed the average existing investment in other facilities and established increased rates for such other existing facilities based on the additional investment involved. It then computed its costs as of March 1, 1950, and established still further increased rates for facilities installed thereafter based upon the then effective costs.

As might be expected, the present-day cost to Edison of supplying these facilities is very much higher than it was in 1918, or than the average cost of existing plant appears on its books. The average plant investment of Edison as of December 31, 1949, in overhead connected lamps was $25.10. The comparable figure for under-

ground connected lamps was $108. These investment costs include, of course, some lights in service in 1918, as well as a number of lights installed theretofore and subsequently during periods of relatively low costs, and are not applicable to present-day installations. It appears that the component costs of utility plant investment such as street lamps have increased since 1918 an average of more than 200 per cent. Linemen's wages, for instance, have increased more than 300 per cent during that period, and the cost of underground cable has jumped about 230 per cent. Municipal taxes have doubled and trebled since that time. The result is, that the present-day average cost of overhead-connected street lamps on company poles is from $115 to $154 per lamp, and of underground-connected lamps, including street work, from $473 to $670 each.

Edison has taken the 1918 rates and has added for each of the proposed classifications an amount sufficient to carry to some measure the average additional investment involved in each category. It has also analyzed its incremental costs as of the present time, and proposes to increase the hourly lighting adjustment, i. e., the debit or credit for hours of use of less than or in addition to the normal use, to a figure which more closely corresponds with present costs.

[1] It appears that Edison's street lighting load, or such load in any utility, is peculiar in several respects. In the first place, it applies within a given area and only to one customer within each such area. Then, it has a constant load factor the curve representing which has, for obvious reasons, not changed over the years. Further, it is peculiar in that the utilization equipment is owned by the utility. Consequently, the cost of the equipment exclusively dedicated to this purpose is directly allocable to this particular service and is ascertainable. There is no reason why the customer who requires the utility to make an excess investment in such equipment should not bear the additional costs involved. That the customers in this case are municipalities and that the load thus eventually falls on the taxpayers instead of on the general domestic and other customers of the company, who may or may not be the same persons, is not a consideration in establishing rates for such service. See Re Mayor of Springfield, D. P. U. 6368.

A great deal of testimony was introduced as to types of equipment which the intervening municipalities wished to have made available as standard equipment. It appears, however, that much of the equipment so described is actually now furnished as standard by Edison, and that in the proposed modification hereinafter described some additional standards are included, which apparently meet in substantial measure the criticisms voiced at the hearing.

[2–5] We have previously indicated our general feeling that a utility which seeks an increase in rates on part of its operations must prove in connection with such proceedings, not only that the increase is justified as to the particular service affected but also that its over-all operating results require that it have the additional revenue in order for it to realize a fair return. Re Hudson Bus Lines, D. P. U. 8666, D. P. U. 9031. Ac-

cordingly, Edison introduced testimony at the instant hearing as to its earnings, both past and estimated future. It shows earnings per share for the twelve months ending November 30, 1950, of $3.07. It paid dividends for the year of $2.80, leaving a balance to surplus of $663,375. It estimates an increase in gross revenues for 1951 of about $4,400,000, or about 6.7 per cent above 1950. However, it anticipates an increase in operating expenses and taxes of over $5,400,000, or about 9.3 per cent, which will bring its net operating income down about 9.1 per cent. Most of the anticipated increases are not controllable. For example, it faces increases in taxes of about $1,700,000, or in the order of 11.6 per cent. After other adjustments, Edison estimates that an income balance transferable to profit and loss will result for 1951 of $6,932,000, a decline of 8.5 per cent under 1950. Assuming dividend declarations in the same amount as last year, this would give Edison a net increase in its surplus account of only $20,000. Earnings in the amount estimated for 1951 would represent a return on total capitalization of only 4.77 per cent, on net plant plus working capital of 5.3 per cent and on paid-in equity capital plus surplus of 6.2 per cent. The addition of $197,000, less taxes, to these figures increases the stated percentages to about 5.4 per cent on net plant. The effect on the other figures cited is too small to show percentagewise. We find that the increase in gross revenues of $197,000 which would result from the application of the proposed rate schedules will not result in an income to Edison which is unduly high or more than adequate under the familiar applicable rules of law. See Lowell Gas Co. v. Department of Public Utilities (1949) 324 Mass 80, 78 PUR NS 506, 84 NE2d 811, cert. den. (1949) 338 US 825, 94 L ed 501, 70 S Ct 71; New England Teleph. & Teleg. Co. v. Department of Public Utilities (1951) — Mass —, 88 PUR NS 73, 97 NE2d 509; Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR NS 193, 64 S Ct 281. Edison has a very large expansion program, consistently with the industry in general, financing to accomplish which must be done in the next few years. Its unfinished construction as of November 30, 1950, was $17,584,833, and is expected to continue at a high level for the next two or three years. It has managed so far to confine its capital accretions to debt, but since, under G. L. Chap 164, § 13, it must stay under a 50 per cent debt ratio, and since its present capital structure is about 45 per cent debt, it is obvious that at least a substantial percentage of future issues will have to be equity securities for the sale of which it will be necessary for Edison to maintain somewhere near its present earnings.

[6] In the course of the hearings, Edison proposed a new form of tariff entitled Street Lighting Rate E, which it asked to be considered as in substitution for the original tariff filed February 13, 1950. This proposal modified the original tariff in several important particulars and was conceded by the town of Brookline to be satisfactory in all but one important respect. The city of Boston admitted that this proposal was an improvement over the first Edison tariff. The revenue effect of the modifications is not

stated, but it is obviously relatively minor.

The sole criticism to the new proposal advanced by the town of Brookline was as to the critical date as of which the new rates will be applied. Edison proposes therein to charge increased rates for all equipment installed after March 1, 1950, the original effective date of Edison's tariff. The town of Brookline and the city of Boston both protest that such rates should apply only for equipment installed after some later date. We believe that Edison revenues should not be thus permanently affected as the result of the exercise by the Department of its statutory power to suspend rates pendente lite. We are further of the opinion that the municipalities have had adequate warning that equipment installed since March, 1950, might be subject to substantially increased rates. Accordingly, we will permit the critical date to remain as proposed by Edison.

That the proposed tariff will interfere with or at least will make more expensive the laudable modernization program of the city of Boston is regrettable but unavoidable. As between the city and Edison, we believe out statutory duty requires us to permit the utility to increase its rates wherever, as here, we are convinced that its costs and financial condition demand such changes. We are living in an era of sharply increased prices, which we are compelled to recognize both by the evidence and by our ordinary intelligence. A municipality cannot escape these conditions any more than can any citizen or any other ratepayer. If increased prices compel a modification of modernization policy, it is no more than what every one of us is forced to do in his own affairs.

[7] In view of the fact that most municipal budgets for the current year are customarily closely allocated by this time, we will make the new rates effective on January 1, 1952.

Accordingly, after due notice, public hearing, investigation, and consideration, it is hereby

Ordered: That the rates and charges stated by Boston Edison Company in Sheets 1, 11, and 11A to M.D.P.U. No. 58 filed on February 13, 1950, to become effective March 1, 1950, be and the same hereby are disallowed; and it is *further*

Ordered: That Boston Edison Company file on or before September 1, 1951, effective January 1, 1952, new schedules of rates and charges for street and fire alarm lighting service throughout its territory in the form presented at the hearing in D.P.U. 8944 and marked Exhibit 54 therein; and it is *further*

Ordered: That the investigation by the Department in D. P. U. 8944 be and the same hereby is terminated and closed.

MISSOURI PUBLIC SERVICE COMMISSION

Re Missouri Natural Gas Company

Case No. 12,103
July 20, 1951

APPLICATION *of natural gas company for order directing disposition of reparation fund; company ordered to retain fund for use in expansion program.*

Reparation, § 43.1 — Overcharges by interstate company — Retention of funds by distributing company.

An intrastate gas distribution company was permitted to retain for use in its expansion program a fund paid to it by order of a Federal court after an interstate company had been found to have collected excess charges, where the cost of distributing the fund to customers would amount to about half of the sum to be distributed, where no objection had been made by the customers to the company's retaining the funds for use in its expansion program, and where the company's retention of the money would not make its earnings excessive.

By the COMMISSION: Pursuant to notice duly given, a hearing was held at the office of the Commission, Jefferson City, Cole county, Missouri, at 10 o'clock A.M., Monday, June 4, 1951, on the application of Missouri Natural Gas Company, a gas corporation subject to the jurisdiction of the Commission, for an order directing disposition of a fund consisting of the sum of $9,041.26 which it had received from the clerk of the United States circuit court of appeals, fifth circuit, in accordance with a judgment entered by the said court in a certain cause then pending there entitled, Interstate Nat. Gas Co. v. Federal Power Commission (1950) 84 PUR NS 33, 181 F2d 833.

The evidence offered and the exhibits received at the hearing, as well as reports on file with the Commission relating to applicant's business and its operations, disclose that:

1. In a stipulation for agreed judgment filed and the judgment duly entered pursuant thereto in the abovementioned Interstate Case by the United States circuit court of appeals, fifth circuit, it is provided that there shall be paid to applicant the sum of $9,041.26 out of the total of $300,898.66 to be distributed to resale customers of the Mississippi River Fuel Corporation to be held or passed on by them for the benefit of ultimate consumers as the respective state Commissions having jurisdiction over such resale customers shall direct and as set forth in the statements attached to said stipulation.

The statement referred to was in the form of a stipulation entered into between this Commission and the applicant, wherein it was provided that the said sum of $9,041.26 should be paid to the applicant and held by it separate

and apart from its own funds, to be applied or disbursed by applicant to its customers or otherwise as this Commission might determine by order or orders after hearing.

It was also pointed out in the said statement that applicant claimed that in effect it had already distributed to its customers the amount of the Interstate money distributable to it by reason of rate reductions at the time the wholesale rate was first reduced and also by refunds to its customers during the period, and that if these facts be found true after hearing and the Commission further finds that applicant is not making an excessive return and would not have excessive earnings by reason of the retention of the refund, the Commission might be disposed to allow applicant to retain said money to be used in its expansion program. However, applicant agreed with the Commission to handle this money as the Commission might direct.

2. The substance of the applicant's claim referred to in the statement is set forth in a letter addressed to this Commission dated January 10, 1950, supplemented by testimony given at the hearing, in which applicant, among other things, stated that in December, 1946, with the approval of the Commission, it refunded to its customers $32,628.79 (erroneously stated in said letter to have been $38,628.79) as a result of a rate reduction made on November 1, 1946, retroactive to February 1, 1946, and that, in addition, in December, 1947, it gave to its customers a 10 per cent discount on their December bills amounting to $8,611.46; that the new rate was established, the refund made, and the discount given at a time when, pursuant to an order of the Federal Power Commission then being contested in the United States circuit court of appeals for the District of Columbia—but without supersedeas—by Mississippi River Fuel Corporation, applicant's supplier of natural gas, it was paying a monthly demand charge of 93 cents per thousand cubic feet which, in a setttlement agreed to between the Federal Power Commission and the Mississippi River Fuel Corporation some time in 1948, was increased to $1.12 per thousand cubic feet retroactive to February 1, 1946, with the result that on March 14, 1949, applicant paid Mississippi River Fuel Corporation an extra $19,847.59 for gas purchased and sold by applicant during the period from February 1, 1946, to June 30, 1948. It is estimated that from November 1, 1946, to December 31, 1949, the rate reduction made by the applicant on November 1, 1946, resulted in a saving to its customers of more than $200,000. Each consumer using 15,000 thousand cubic feet per month saved $2.12 per month.

3. As of April 30, 1951, applicant served 12,245 customers, of which 11,030 were domestic, 989 were commercial on the general rate, 2 were interruptible customers for industrial use, and 224 were commercial customers served on the commercial rate. Between February 1, 1946, and April 30, 1951, an estimated 5,440 customers left applicant's lines. During the period from June 1, 1943, to January 20, 1946, applicant had 6,793 customers, during which period approximately 2,500 to 3,000 customers left its lines. A good many of those customers who left the line, particularly those in the Poplar Bluff, Missouri, area, probably could not be located

now since many of them were transients who have since migrated.

4. For the 12-month period ended April 30, 1951, after appropriate adjustments for income taxes applicable to industrial and merchandise sales, applicant's operating income amounted to $139,535.02. Its present monthly demand charge is $20,250.72 as against a monthly demand charge of $12,286.48 paid during the first ten months of 1950. The increased demand charge is due altogether to the increase in the domestic load. On the basis of four months' actual and eight months' estimated, and assuming that the demand and commodity rates now in effect continue for the rest of the calendar year, it appears that its operating income for the year ending December 31, 1951, will amount to $142,200 after adjustments made on account of net revenue received from the sale of (a) industrial gas, (b) merchandise.

5. As of April 30, 1951, applicant's Property and Plant Account amounted to $2,164,869.25. In addition, it had on deposit with the trustee under the indenture securing its first mortgage series A 4 per cent bonds the sum of approximately $300,000 representing part of the proceeds from the sale on May 1, 1951, of $400,000 principal amount of its series A bonds which will be used during the balance of the year 1951 to pay for new construction needed to render efficient and adequate service. Its material and supply inventory as of April 30, 1951, amounted to $179,000 and is required in connection with applicant's construction program, the greater portion of which involves expenditures for reinforcing the distribution system in order to insure adequate service to domestic consumers already on the lines.

6. Based upon its experience with the refund made in December, 1946, applicant estimates that it will cost $6,441 to distribute the $9,041.26 if the Commission orders distribution to be made pro rata among its present 12,245 customers and the 5,440 customers who are no longer such. If the refund is to be made to customers presently on its lines the cost of such distribution is estimated at $4,286 and if the fund is to be distributed to all of the customers served from June 1, 1943, to January 20, 1946, the cost is estimated at $2,378 assuming that the 2,500 or so customers who left the lines between June 1, 1943, and January 20, 1946, can be easily located.

7. No one has suggested that applicant should not be permitted to retain this fund. The mayors in most of the cities and towns in which the applicant operates have written to the Commission, each stating it as his opinion that applicant should be permitted to retain the fund for use in its expansion program. The records on file with the Commission show that applicant has not paid any dividends and has used all of its earnings to build up and expand its distribution system in the public interest.

In view of the foregoing the Commission is of the opinion that it is not practical to distribute the fund to applicant's consumers. The amount involved is small. No matter what formula for distribution to its customers is determined upon, no one of them can get more than a pittance. The cost of distribution, no matter what the basis may be, will take a very substantial amount of the total. The extra de-

mand charge applicant paid Mississippi River Fuel Corporation on account of gas purchased from February 1, 1946, to June 30, 1948, as a result of the retroactive increase in such charge from 93 cents per thousand cubic feet to $1.12 per thousand cubic feet is more than twice the amount here involved. In establishing its new lower rate in November, 1946, and making it retroactive to February 1, 1946, applicant was justified in its belief that an increase in the monthly demand charge, if permitted or ordered, could not be made retroactive since its supplier, then contesting the Federal Power Commission's rate order, had not done anything to supersede the Commission's order. On the basis of the information now available to us, it does not seem that applicant is making an excessive return and will have excessive earnings by reason of retention of the funds here involved. We believe that in the long run its consumers will benefit more if applicant is allowed to retain this money for use in its expansion program than they will from the few cents they will receive were this fund to be distributed to them. Applicant's operating income appears to be on the decline, at least for the present. Its cost of gas may be increased in the not too distant future and this may call for some readjustment of its rates. In any event, the Commission can at some appropriate time, with due regard to economy and practicality, take into consideration the decision it makes on this application with more substantial resulting benefits to the consumers.

It is our best judgment that applicant should be permitted to retain this fund.

Ordered: 1. Applicant, Missouri Natural Gas Company, is hereby authorized to retain the sum of $9,041.26 which it has received from the clerk of the United States district court of appeals, fifth circuit, pursuant to a judgment entered by said court in a certain cause then pending there entitled, Interstate Nat. Gas Co. v. Federal Power Commission (1950) 84 PUR NS 33, 181 F2d 833, and to use the same in its expansion program.

Ordered: 2. That this order shall become effective on this date, and the secretary of the Commission shall forthwith serve certified copies of same on all interested parties.

Harlan White et al.

v.

Wisconsin Telephone Company et al.

2-U-3495
July 3, 1951

PETITION *by telephone subscribers charging inadequacy of existing service and requesting that other company be required to extend service; company ordered to make present service adequate.*

Monopoly and competition, § 48 — Opportunity to improve service — Authorization of competition.

A public utility rendering inadequate service is entitled to a reasonable opportunity to make its service adequate before a competing service is authorized; but if, after opportunity is afforded it, it still fails to make its service adequate, the Commission may properly authorize another company to extend service into its territory.

By the COMMISSION: Harlan White and eleven other persons residing in the town of Fayette, LaFayette county, on December 26, 1950, filed a petition with this Commission requesting telephone service from the Darlington exchange of the Wisconsin Telephone Company and alleging the inadequacy of service rendered by Dukes Prairie Telephone Company at its Waldwick exchange.

APPEARANCES: Harlan White, Darlington; W. E. McGavick, Attorney, Milwaukee, for Wisconsin Telephone Company; Andrew Leuthold, Secretary (March 29th hearing), Mineral Point, for Dukes Prairie Telephone Company.

Of the Commission staff: W. A. Kuehlthau, engineering department (Feb. 7th hearing) and H. T. Hartwell, engineering department (March 29th hearing).

Facts of Record

The Commission finds the essential evidentiary facts herein to be the following:

The petitioners in this case desire telephone service from the Darlington exchange of the Wisconsin Telephone Company. All reside in territory formerly served by the Belmont and Pleasant View Telephone Company from the Waldwick exchange. The Dukes Prairie Company (central office Waldwick) acquired the lines serving this area from the Belmont Company in January, 1951. At least eight, and possibly nine, of these petitioners have had Waldwick central service at some time within the last few years. Serv-

ice has been inadequate for the last several years, and some telephones have been cut off entirely.

The Dukes Prairie Company objects to the invasion of its service area and to the loss of these customers unless a comprehensive agreement is reached with the Wisconsin Telephone Company and the Commonwealth Telephone Company which would permit the complete abandonment of service by the Dukes Prairie Company. Wisconsin Telephone Company is not desirous of invading the territory in which Dukes Prairie Telephone Company is authorized to serve, and neither has it offered any plan designed to relieve the Dukes Prairie Company of its obligation to serve.

The extension of service to the petitioners by Wisconsin Telephone Company would require construction of lines which would represent a duplication of facilities in the territory which Dukes Prairie Telephone Company is presently obligated to serve. In the area in which the petitioners reside, the lines of the Dukes Prairie Telephone Company require rebuilding.

Opinion

This Commission, in an order entered March 16, 1951, in its docket 2–U–3441, 88 PUR NS 108 (Investigation on Commission's Motion of Refusal of the Langlade Telephone Company to Extend Service to Twenty-two Persons in the town of Norwood, Langlade county), stated that in accordance with well-settled law an existing public utility upon a finding that the service it is furnishing to the public is inadequate, is entitled to a reasonable opportunity to make its service adequate. If, after reasonable opportunity is afforded to render adequate service, the utility fails to do so, the Commission has authority to find that an extension of service by another public utility is required by public convenience and necessity. See Union Co-op. Teleph. Co. v. Public Service Commission, 206 Wis 160, PUR 1932B 269, 239 NW 409.

Dukes Prairie Telephone Company should be afforded a reasonable time within which to construct adequate facilities to meet the requirements of the petitioners for service. If service is not extended, the Commission will consider that said company has in fact abandoned service in said area and will take such action as it deems proper in directing service to be furnished to said petitioners. See Commission Docket 2–U–2947, Gates v. Wisconsin Teleph. Co. (1949) 79 PUR NS 311.

Findings of Ultimate Fact

The Commission finds:

(1) That the facts of record as above set forth constitute the evidentiary facts herein.

(2) That Dukes Prairie Telephone Company holds itself out to furnish telephone service to the petitioners all of whom reside in the town of Fayette, and that adequate service is not now being furnished to said petitioners.

(3) That Wisconsin Telephone Company is a public utility serving in the town of Fayette, LaFayette county, and that the petitioners in this proceeding reside in sections of the aforesaid town not presently served by said company.

Conclusion of Law

The Commission concludes:

That it has authority under

§ 196.03, Statutes, to enter an order requiring Dukes Prairie Telephone Company to furnish adequate service to the petitioners and that such order should be issued.

ORDER

It is therefore *ordered:*

(1) That Dukes Prairie Telephone Company construct lines to serve the petitioners, all of whom are located in the town of Fayette, LaFayette county; that metallic circuits be provided, and that company-owned phones be reconditioned; that the number of subscribers per circuit be limited to ten.

(2) That the above service be made available within sixty days from the date of this order.

(3) That if the Dukes Prairie Telephone Company does not fulfil the requirements of this order within the 60-day period referred to in (2) above, jurisdiction be and hereby is retained for the entry of such further order as it may desire to enter.

WISCONSIN PUBLIC SERVICE COMMISSION

Dr. E. H. Federman et al.

v.

Mecan Telephone Company et al.

2-U-3413
July 20, 1951

PETITION *by individuals to require telephone service; rendition of service ordered.*

Service, § 121 — Telephone facilities at resort — Obligation to serve others.

1. An operator of a resort who has installed telephone facilities for the single purpose of making such service available at the resort and has at no time held himself out to serve others has no obligation to serve other parties by means of his lines, p. 92.

Monopoly and competition, § 48 — Inadequate service — Right to improve service.

2. An existing public utility, upon a finding that its service is inadequate, is entitled to a reasonable opportunity to improve its service, and if the utility fails to do so, the Commission has power to find that the extension of service by another utility into the affected area is required by public convenience and necessity, p. 93.

Service, § 132 — Duty of existing telephone company — Opportunity to provide service — Time limitation.

3. An existing telephone company, rather than another company, was ordered to provide certain services within its territory within sixty days of the date of the order, and jurisdiction was retained so the other company could be granted authority to serve such territory if such service was not rendered, p. 93.

By the COMMISSION: On November 9, 1950, the Commission issued an order dismissing the petition of Dr. E. H. Federman and others relative to their request for telephone service. The petitioners had failed to appear either personally or by counsel at the scheduled hearing on October 20, 1950.

On December 13, 1950, the Commission issued an order reopening the proceeding, upon receipt of a letter from Dr. Federman stating that he had not understood that his representation was necessary at the original hearing. Dr. Federman also called attention to the fact that the Scharenberg Resort at White Lake has a telephone connected to the Montello exchange and may be a public utility.

APPEARANCES: Dr. E. H. Federman, Montello, for the petitioners; Ed Sommerfeldt, Secretary-treasurer, Montello, for Mecan Telephone Company; Howard Moran, Commercial Superintendent, Madison, for Commonwealth Telephone Company; Herbert S. Scharenberg, owner, Montello, for Scharenberg's Resort. Of the Commission staff: C. F. Riederer, engineering department.

Findings of Evidentiary Fact

The Commission finds the essential evidentiary facts herein to be the following:

Dr. E. H. Federman and nine other applicants for telephone service reside near White Lake in section 1, town of Montello, Marquette county, and about 4 miles northeast of Montello. Telephone facilities are located within one mile of the applicants and include a private line belonging to H. S. Scharenberg and the single line of the Mecan Telephone Company, a roadway company. Both of these circuits are switched at the Montello exchange of the Commonwealth Telephone Company. The latter also provides telephone service in the town of Montello.

Mr. Scharenberg constructed his line many years ago for the express purpose of providing service to his resort. At no time has the line served other subscribers, and Scharenberg does not hold himself out to serve others.

The Mecan Telephone Company also constructed its line some time ago. The company now serves eight subscribers, but the record indicates that it could also serve others if it chose to do so. The company is not willing to serve the applicants in this proceeding since it considers that it does not have the necessary facilities. A portion of the existing line of this company is known to be in poor condition.

The position taken by the Commonwealth Telephone Company is that it would serve Dr. Federman providing that the two switched lines would abandon their facilities and thereby permit Commonwealth to extend its own facilities into the area.

[1] Mr. Scharenberg has no obligation to serve other parties by means of his telephone line. These facilities were installed for the single purpose of making telephone service available at his resort, and at no time has the owner held himself out to serve others.

The area in which the petitioners reside is considered to be part of the service area of the Mecan Telephone Company. Said company is not now furnishing reasonably adequate service and facilities to the public as shown by the fact that it has not extended

service to the petitioners and other applicants for service and that its facilities are inadequate.

[2, 3] The laws is well established that an existing public utility upon a finding that its service is inadequate is entitled to a reasonable opportunity to make its service adequate. If a utility after reasonable opportunity fails to do so, the Commission has power under the law to find that the extension of service by another public utility into the affected area is required by public convenience and necessity. See Union Co-op. Teleph. Co. v. Public Service Commission, 206 Wis 160, PUR1932B 269, 239 NW 409.

The Supreme Court of Ohio in Commercial Motor Freight v. Public Utilities Commission (1950) 154 Ohio St 388, 87 PUR NS 348, 95 NE2d 758, ruled that where a protesting motor carrier holding authority to serve a certain territory was given a period of sixty days within which to expand its operations to provide additional service over the routes being served by it but failed to do so within the 60-day period, the Commission lawfully and reasonably granted applications to other carriers to serve the territory.

This Commission in its docket 2-U-2947, Gates v. Wisconsin Teleph. Co. (1949) 79 PUR NS 311, directed two companies which held authority in the territory for which service was requested to submit plans and commitments for improvement of their service; and upon their failure to present such plans, a further order was issued which directed a third utility, which rendered service in the town in question, to extend service to the petitioners as requested.

Findings of Ultimate Fact

The Commission finds:

1. That the Mecan Telephone Company has held and now holds itself out to furnish telephone service to the public in the town of Montello, Marquette county, and owns and operates plant and equipment in said town for such purpose, and that the facilities of said company are nearest to the petitioners, but said company is not furnishing reasonably adequate service to the petitioners.

2. That the Commonwealth Telephone Company is a public utility serving in the town of Montello, Marquette county.

Conclusion of Law

The Commission concludes:

1. That the Mecan Telephone Company is a public utility and as such has an obligation to furnish reasonably adequate service and facilities to the public.

2. That the Public Service Commission has jurisdiction under §§ 196.03 and 196.26, Statutes, to issue an order directing Mecan Telephone Company to furnish adequate service to the petitioners, and that such order should be issued herein.

ORDER

It is therefore *ordered:*

1. That the Mecan Telephone Company, within sixty days from the date of this order, furnish reasonably adequate service and facilities to the following, all of whom reside in section 1, town of Montello, Marquette county: Dr. E. H. Federman, W. H. Freitag, Emil Buck, Clarence Troost, Al Buck, Louis Hess, Dr. Madder, Joseph Monatz, Mr. Schaefer, and Mr. O'Brien.

2. That jurisdiction be and hereby is retained for such further action as the facts may require at the expiration of the 60-day period referred to in paragraph (1).

WISCONSIN PUBLIC SERVICE COMMISSION

Milwaukee County Industrial Union Council C. I. O.

v.

Milwaukee Electric Railway & Transport Company

2-SR-2333
June 25, 1951

COMPLAINT *by union council requesting electric railway and transport company to integrate another line with its system; dismissed for want of jurisdiction.*

Procedure, § 36 — Res adjudicata — Commission decision — Collateral attack.

1. A Commission decision that authority is not required by statute for a transportation company to convey its lines to another company, which decision the parties relied upon in transferring the property, may not be collaterally attacked, as the procedure for review is the only method available for attacking an administrative determination of the Commission, p. 96.

Procedure, § 32 — Commission decision — Transfer of property — Right to reopen.

2. An action of the Commission relating to a transfer of property cannot be reopened at will under § 196.39, Wisconsin Statutes, p. 96.

Commissions, § 26 — Limitation on jurisdiction — Matters in Federal court.

3. The Commission has no jurisdiction to order anyone to assume control of and to operate transit lines being operated by a trustee appointed by a Federal district court in a proceeding for reorganization of the corporation, p. 96.

By the COMMISSION: On March 14, 1951, the Milwaukee County Industrial Union Council C.I.O. filed a complaint with the Commission requesting that The Milwaukee Electric Railway and Transport Company integrate with its mass transport system, the interurban railway line of the Milwaukee Rapid Transit and Speedrail Company between Milwaukee and Waukesha and between Milwaukee and Hales Corners. A resolution of the county board of Milwaukee county of similar import was filed on March 15, 1951. A hearing upon these matters was duly ordered, limited to the

question whether the Commission has jurisdiction to order the Transport Company to assume responsibility for the operation of said line.

APPEARANCES: Milwaukee County Industrial Union Council, C.I.O., by Fred A. Erchul, Secretary-treasurer, Milwaukee; Milwaukee County, by Robert A. Russell, Assistant Corporation Counsel, Milwaukee.

As their interest may appear: Bruno V. Bitker, Trustee for Milwaukee Rapid Transit and Speedrail Company, in person and by James E. McCarty, Attorney, Milwaukee; Leo Federer, individually and for riders of Rapid Transit Line, Milwaukee; J. E. Maeder, in person and by Ralph J. Drought, Attorney, Milwaukee; city of West Allis, by George A. Schmus, City Attorney, West Allis; town of Greenfield, by J. Finn Grimes, Town Attorney, Milwaukee; Metropolitan Transportation Committee and 3,000 riders, by E. L. Tennyson, Milwaukee; James H. Collins, Alderman 16th ward Milwaukee; Bluemound Road Advancement Association, by Albert Hammond, Milwaukee; city of Milwaukee, by Walter J. Mattison, City Attorney, and Harry G. Slater, Assistant City Attorney.

In Opposition (to jurisdiction of Commission): The Milwaukee Electric Railway & Transport Company, by Van B. Wake, Attorney, Milwaukee.

Of the Commission staff: W. H. Damon, engineering department.

Findings of Fact

The Commission finds that the essential facts are as follows:

The records of the Commission show that on November 23, 1946, the Transport Company filed with the Commission a copy of the Contract of Conveyance entered into on November 21, 1946, between said company as grantor and Kenosha Motor Coach Lines, Inc., as grantee covering the conveyance of the lines of interurban railway in question. In the accompanying letter dated November 22, 1946, the Transport Company asserted that "the sale of this line does not require the consent, approval, or any other action by the Commission." These documents came to the attention of the Commission and on November 25, 1946, the Commission deferred any action until a further report by its then chief counsel when they could be considered with the application of the grantee for the approval of its security issue incident to such conveyance of the lines. In its decision approving the security issue of the grantee dated December 7, 1946 (Re Kenosha Motor Coach Lines, Docket 2-SB-277), the Commission said: "We have given consideration to the question of whether the vendor of this property should also file an application to obtain the consent of the Commission to the sale of this interurban railway property and business and of the franchises under which the same is operated and have concluded that under Wisconsin statutes neither the sale transaction here involved nor the terms thereof require the consent, approval, or other action of this Commission for its validity. The pending application therefor is herein considered solely pursuant to the provisions of Chap 184 of the statutes relating to the issuance of securities."

The position there taken was consistent with informal action with re-

spect to other similar conveyances by the Transport Company of portions of its interurban railway system, which had been consummated without formal approval but with the full knowledge of the Commission and in one instance with advice to the Transport Company by the Commission's then chief counsel that in his opinion no approval by the Commission was necessary.

No legal challenge within the statutory period for review was ever made against the action of the Commission either in the formal securities docket above quoted or against its informal determinations, which latter determinations are evidenced by the fact that it did not require the filing of applications for approval of the various conveyances to be made when they were called to its attention.

Opinion

[1, 2] The Commission determined in 1946 that its approval was not required under any statute to enable the Transport Company to convey the interurban lines in question to Kenosha Motor Coach Lines, Inc., and so advised the parties who acted accordingly and duly consummated the sale. The parties to the conveyance have relied upon the Commission's action and property rights have vested. They have operated under the contract for more than four years. There is no evidence of bad faith. The Commission's records which are open to the public show the contract of conveyance. Neither the present Commission nor any other party may now, four years later, collaterally attack the Commission's action or inquire into the correctness of such determination. The procedure for review is the only method available for attacking an administrative determination of the Commission. Allen v. Railroad Commission (1930) 202 Wis 223, 231 NW 184. Where an action of the Commission relates to a transfer of property it cannot reopen at will under § 196.39, Statutes. Superior Water, Light & P. Co. v. Public Service Commission (1939) 232 Wis 616, 32 PUR NS 442, 288 NW 243. There was no attempt on the part of anyone to even take the first step to review the Commission's action in the case within the time and in the manner prescribed by the appropriate statutes.

[3] In addition, at all times up to date the interurban lines in question have been operated under claim of ownership by Kenosha Motor Coach Lines, Inc., whose name was later changed to the Milwaukee Rapid Transit and Speedrail Company. The latter is now being operated by a trustee appointed by the United States district court for the eastern district of Wisconsin under a proceeding for the reorganization of a corporation No. 27508, and in any event it would appear impossible for the Commission to order anyone else to assume control of and operate these lines.

The Commission concludes:

That it is without jurisdiction to require the Transport Company to assume responsibility for and operate the lines of interurban railway in question.

ORDER

It is therefore *ordered:*

That the proceedings herein be and the same hereby are dismissed.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Ohio Power to Spend $119,000,000 in 1951-53

OHIO POWER COMPANY, a subsidiary of American Gas & Electric Company, estimates it will spend more than $119,000,000 on new construction in the years 1951-53.

This year's expenditures are budgeted at about $27,207,000. Next year it will spend about $49,579,000 and in 1953 it will spend about $42,351,000. Nearly one-half of the total will be for new generating facilities. These include a second unit of 150,000 kilowatts, costing $11,446,000 scheduled to go into operation early next year at the Philip Sporn plant, southwest of Parkersburg, West Virginia, and two 200,000 kilowatt units being built for the Muskingum river station now under construction near Beverly, Ohio. These generators, costing $43,500,000, are expected to go on line in April and June of 1953. Other major items are $32,618,000 for transmission lines and $19,598,000 for distribution facilities.

Twelve Gas Utilities Win Sales Honors

TWELVE of the nation's gas utilities have been named winners of the industry's highest sales honors for 1951, according to an announcement by the American Gas Association.

The competition—in which the 12 divisions were based on relative size of the companies' sales potentials—was part of a sales campaign marking the silver anniversary of the gas refrigerator.

The winners:

Atlanta Gas Light Company; Brooklyn Union Gas Company; Chattanooga Gas Company; Southern Union Gas Company, Dallas; Southern California Gas Company, Los Angeles; Southern Counties Gas Company, Los Angeles; Central Indiana Gas Company, Muncie; Philadelphia Gas Works Company; Natural Gas Company of West Virginia, with headquarters in Pittsburgh; Laclede Gas Company, St. Louis; Florida Public Utilities, West Palm Beach; and Central Florida Gas Corporation, Winter Haven.

Springfield Boiler Company Expands Sales Organization

SPRINGFIELD BOILER COMPANY, Springfield, Illinois, manufacturer of water tube boilers and associated equipment, announces two recent changes in its sales engineering organization. In Philadelphia, A. D. Flower has become a member of the Springfield sales staff and will cover a territory consisting of the eastern half of Pennsylvania, the southern section of New Jersey, the District of Columbia, and the states of Delaware, Maryland, and Virginia. In Los Angeles, the firm of Delmer Engineers has been appointed to represent Springfield in the lower portion of California, in Arizona, and in a part of Nevada.

Philadelphia Electric Plans New Expansion

PHILADELPHIA ELECTRIC COMPANY has extended its postwar construction program through 1956 and has raised planned expenditures over the next five years to $365,000,000.

This, with the $217,000,000 already spent since 1946, will bring total postwar expenditures to more than $500,000,000. Earlier, the company's construction expenditures for 1951-55 had been estimated at $320,000,000.

The expansion program was described by Henry B. Bryans, president, as "geared to meet ever-increasing electric, gas and steam loads." He said present plans provide for addition of 800,000 kilowatts of electric generating capacity during the 1952-56 period. This will give the system a total capacity of 2,686,000 kilowatts, 45 per cent greater than it now has.

1951 George A. Hughes Awards Competition Announced

THE 1951 George A. Hughes Awards competition for electric utility companies has been announced by Hotpoint, Inc., which sponsors the annual activity through the Edison Electric Institute. An innovation in the 1951 contest will permit companies to compete in two size classifications for the cash and trophy awards to be announced at the EEI sales conference in April, 1952.

Edward R. Taylor, Hotpoint vice president, said that separate awards will be made to companies having less than 150,000 meters, and those with more than 150,000, so that utilities will be competing with companies more nearly

(*Continued on page* 34)

their own size. As in the past, the awards will be made in recognition of outstanding efforts to promote major electric appliances, and load-building results obtained through these activities.

Duplicate awards to companies in the large and small classifications will be made for promotions on electric kitchens, ranges, water heaters, dishwashers, and commercial cooking equipment. In each activity, the winning companies will receive a trophy, with the cash prizes going to the individual or group responsible for the success of the program.

In making the awards, the judges will take into consideration the plans and methods by which the utility approached the market. This includes terms, inducements, advertising, promotion, load-building compensation and other activities to create consumer interest. The effectiveness in putting these programs into action also will be an important factor in the decision.

The Hughes awards were started 16 years ago with the aim of extending the advantages of electric living.

Booklet on Disc Dictating Equipment

A NEW 12-page, two-color booklet entitled "Distinctly Yours" just released by Thomas A. Edison, Incorporated, West Orange, New Jersey, describes the advantages and features of the Disc Edison Voicewriter.

The booklet describes Edison Hi-Definition recording, the advantages of double length indexing and numerous other features of the equipment. Large illustrations of both executive and secretarial models point out features of Edison equipment.

New 300 Lb. U. L. Union

THE Capitol Manufacturing & Supply Company, Columbus, Ohio, announces the manufacture of a new 300 lb. steam pipe union, made from seamless and forged steel. It is listed by Underwriters' Laboratories for use with all piping applications, including hazardous liquids, and 2,000 lb. cold water, oil, or gas, non-shock.

This union supplements the Capitol 250 lb. union, and, in black, is impregnated with an effective rust resistant. The unions are also supplied zinc coated. All unions are furnished with a brass to steel ground joint seat and, for modern merchandising, are cartoned in convenient quantities at no extra charge.

Due to improved production techniques, Capitol unions are said to be considerably lower in price than other 300 lb. unions. At the present time, these unions are being manufactured in sizes ¼ in.-2 in. inclusive.

Albert R. Mumford Receives Percy Nicholls' Award

ALBERT R. MUMFORD, research engineer for Combustion Engineering - Superheater, Inc., received the Percy Nicholls' Award on October 11th at the fourteenth annual Joint Fuels Conference sponsored by the Fuels Division of the American Society of Mechanical Engineers and the Coal Division of the American Institute of Mining and Metallurgical Engineers. A. W. Thorson, supervising engineer of United Engineers & Constructors, Inc., made the presentation of the award, which was established in 1942 to recognize "notable scientific or industrial achievement in the field of solid fuels."

The citation for the Percy Nicholls' award recognized Mr. Mumford's contribution to important advances in utilization of fuels through his research work on the combustion of coal, heat transfer, and circulation in steam generators. He has directed the work of the ASME Special Research Committee on Furnace Performance Factors, the reports of which form an important contribution to engineering literature on heat absorption by boiler furnaces.

Mr. Mumford has long been active in committee work of the American Society of Mechanical Engineers, the National District Heating Association, the American Society of Heating & Ventilating Engineers, and the American Society for Testing Materials. He served as vice president of ASME from 1946 to 1950. Over the years he has contributed many valuable articles to technical publications in the steam power field.

J-M Appointment

APPOINTMENT of Don L. Hinmon, as assistant manager of the Johns-Manville Transite Pipe Department was announced recently by F. J. Wakem, merchandise manager, industrial products division.

Mr. Hinmon succeeds E. A. Phoenix who was recently appointed to the new J-M post of manager of market surveys.

Wisconsin P&L Installs World's First "Supercharged" Generator

ALLIS-CHALMERS has announced the installation of the world's first "supercharged" generator at the Edgewater plant of the Wisconsin Power and Light Company in Sheboygan, Wisconsin. This new design rated 60,000-kw, 12,500-volt, 3600-rpm steam turbine driven generator was installed in mid-summer and is now in operation. It embodies a new principle which saves 30 to 40 per cent of the material of a normal 60,000-kw machine.

The great reduction in weight and length is achieved by forcing hydrogen at much higher

(*Continued on Page* 36)

velocity than has been used before, directly over the surfaces of the current-carrying copper conductors of the rotor. In addition to the normal fans for circulating the hydrogen, the new generator has a two-stage centrifugal compressor, much like an oversize aircraft supercharger, mounted at one end of the rotor shaft supplying gas to the rotor. To get the heat out of the rotor faster, engineers have devised specially shaped copper windings through which cool hydrogen travels at high speed. After being heated in passing through the rotor, hydrogen is cooled by conventional water-to-hydrogen heat exchangers.

The heat removing ability of the supercharged design is demonstrated by test data showing that in less than one-fiftieth of a second hydrogen passes through the full length of the rotor passages of a 60,000-kw machine, while at the same time it absorbs enough heat to raise the temperature to 90 degrees F.

Idaho Power to Spend $22,831,000 This Year

THE Idaho Power Company's expansion expenditures for 1951 are expected to total $22,831,000, with an additional $9,578,000 scheduled for next year. Biggest single item in the current program is the construction of the $19,373,000 C. J. Strike hydro-electric plant on the Snake river, with the first of three units scheduled to go into service late this year and the final unit in the spring of 1952.

New 25-50 MC Mobile Radio Announced by G-E

NEW 25-50 mc mobile radio communications equipment for operation in both 20 KC and 40 KC channel widths, and featuring quadra-tuned IF transformers in the receivers, has been announced by the General Electric Company.

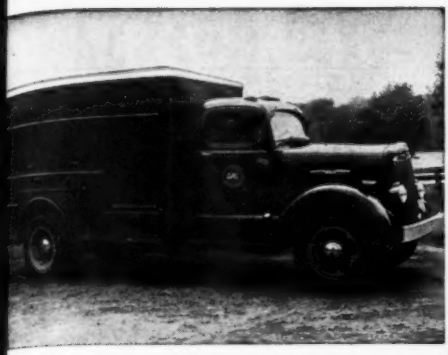
Separate models are available for operation in either 20 or 40 KC channels, and the wide band equipment can later be converted to 20 KC operation at extremely low cost — only three standard condensers and three standard resistors, according to L. W. Goostree, Jr., G-E radio communications sales manager.

For further information, write to Department N-7, inquiry section, G-E Advertising Division, Electronics Park, Syracuse, New York.

Wm. B. Tippy Heads Commonwealth Gas Conversions

COMMONWEALTH SERVICES, INC., management and engineering consulting firm, announced recently the incorporation of a subsidiary, Commonwealth Gas Conversions, Inc., of which William B. Tippy has been made president.

The new company will serve operating gas utilities in converting present manufactured gas appliances for the use of natural gas or high B.T.U. manufactured gas.



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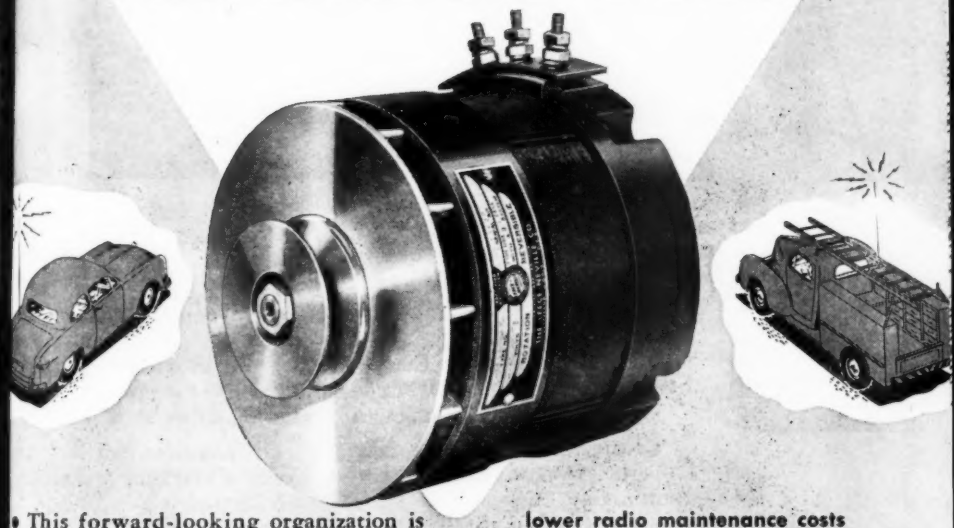

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Dam breast, power house and switching yard of the Buchanan Dam, constructed by Lower Colorado River Authority.

Oil circuit breakers are auxiliary-battery operated by the Exide-Manchex. Operation of a 12′ butterfly valve, not shown, is a new application of emergency battery power.

Bank of 60—EME-13C Exide-Manchex Batteries at Buchanan Dam. Mounted back to back on two 2-step Exide Racks.

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Exide-Manchex BATTERIES

A short distance above the capital city of the Lone Star State, a power station enlarged in 1949-50 is in operation. Buchanan Dam, a unit of the Lower Colorado River Authority, is one of the most modern and finest equipped stations in the country.

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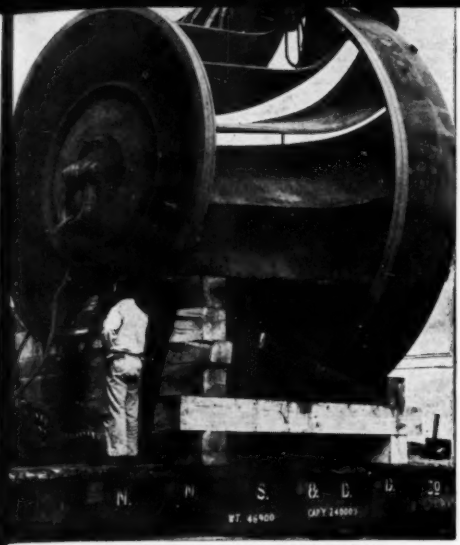

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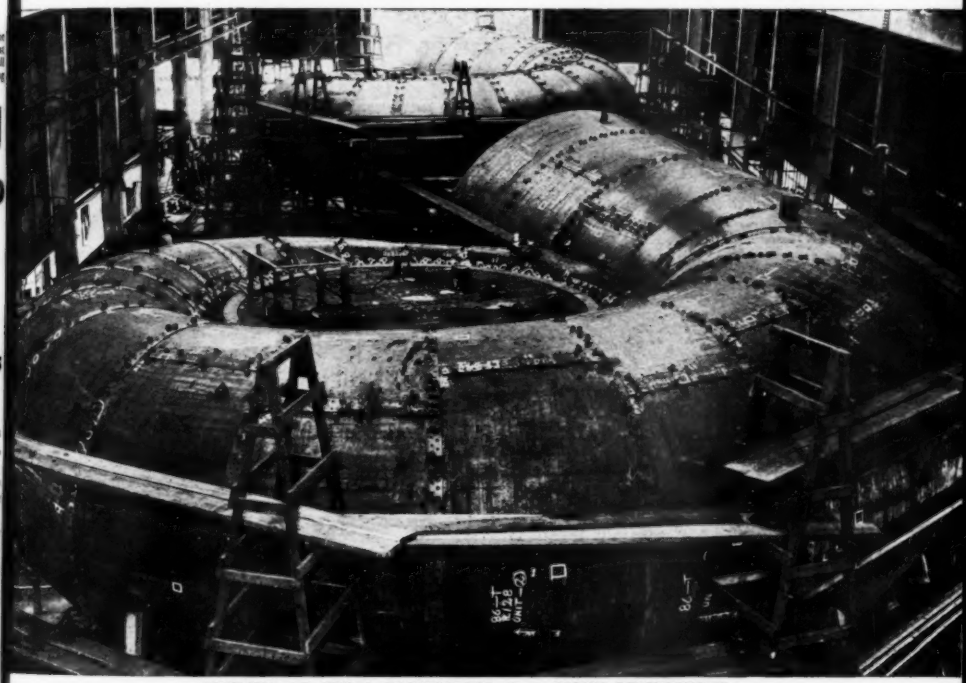

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NEWPORT NEWS

SHIPBUILDING AND DRY DOCK COMPANY

Newport News, Virginia

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PROFESSIONAL DIRECTORY (*continued*)

PROFESSIONAL DIRECTORY (*continued*)

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